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220783  
Nos. 2209, 2210 AND 2211.

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United States  
**Circuit Court of Appeals**  
For the Ninth Circuit.

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THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2209.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,  
CLARENCE W. ROBNETT, WILLIAM DWYER,  
and FRANK W. KETTENBACH,

Appellees.

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THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2210.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,  
CLARENCE W. ROBNETT, WILLIAM DWYER,  
THE IDAHO TRUST COMPANY, a Corporation,  
THE LEWISTON NATIONAL BANK, a Corpora-  
tion, THE CLEARWATER TIMBER COMPANY,  
a Corporation, ELIZABETH W. THATCHER,  
CURTIS THATCHER, ELIZABETH WHITE,  
EDNA P. KESTER, ELIZABETH KETTEN-  
BACH, MARTHA E. HALLETT, and KITTY  
E. DWYER,

Appellees.

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THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2211.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,  
and WILLIAM DWYER,

Appellees.

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**Transcript of Record.**

**VOLUME I.**

(Pages 1 to 400 Inclusive.)

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Appeals from the District Court of the United States for the  
District of Idaho, Central Division.

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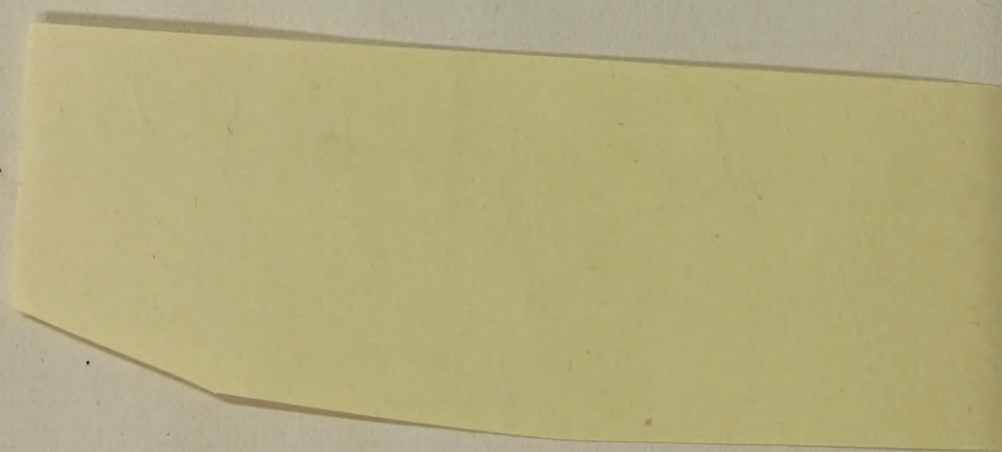




Records of U. S. Circuit Court  
of appeals

785





**Nos. 2209, 2210 AND 2211.**

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**United States  
Circuit Court of Appeals  
For the Ninth Circuit.**

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**vs.**

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THE LEWISTON NATIONAL BANK, a Corpora-  
tion, THE CLEARWATER TIMBER COMPANY,  
a Corporation, ELIZABETH W. THATCHER,  
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**Appeals from the District Court of the United States for the  
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United States  
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THE UNITED STATES OF AMERICA,  
Appellant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,  
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Transcript of Record.

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VOLUME I.

(Pages 1 to 400, Inclusive.)

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Appeals from the District Court of the United States for the  
District of Idaho, Central Division.

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*In the District Court of the United States Within  
and for the District of Idaho, Central Division.*

IN EQUITY—#388.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order Extending Time [to December 19, 1912, to  
File Record].**

On the application of the Acting Attorney General of the United States, for good cause shown, and it further appearing to the Court that the transcript in this cause is voluminous and cannot be prepared within thirty days from and after the signing of the Citation in said cause,

IT IS THEREFORE ORDERED, that the time for filing said transcript in the Circuit Court of Appeals be and is hereby extended sixty days from and after the 20th day of October, A. D. 1912.

Dated this 23d day of September, A. D. 1912.

FRANK S. DIETRICH,

District Judge.

[Endorsed]: No. 388. In the District Court of the United States, District of Idaho, Central Division. The United States of America, Complainant, vs. William F. Kettenbach et al., Defendants. Order Extending Time for Filing Transcript.

No. 2209. United States Circuit Court of Appeals for the Ninth Circuit. No. 388. In the District



Court of the United States for the District of Idaho. United States of America, Complainant, vs. William F. Kettenbach et al., Defendants. Order Extending Time for Filing Transcript. Filed Oct. 3, 1912. F. D. Monckton, Clerk. Refiled Dec. 19, 1912. F. D. Monckton, Clerk.

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**[Order Extending Time to December 26, 1912, to  
File Record.]**

*In the District Court of the United States, for the  
District of Idaho, Central Division.*

THE UNITED STATES OF AMERICA,

Appellants,

vs.

WILLIAM F. KETTENBACH et al.,

Respondents.

For good cause shown, it is hereby ordered that the time to file the transcript and docket the above-entitled cause in the U. S. Circuit Court of Appeals be and the same is hereby extended and enlarged from the 19th day of December, 1912, to and including the 26th day of December, 1912.

Dated December 19, 1912.

FRANK S. DIETRICH,

Judge.

[Endorsed]: No. 388. In the District Court of the United States, District of Idaho, Central Division. The United States, Appellant, vs. William F. Kettenbach et al., Respondents. Order Extending Time to

File Transcript. Filed Dec. 23, 1912. F. D. Monckton, Clerk.

No. 2209. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to and Including Dec. 26, 1912, to File Record Thereof and to Docket Case. Filed Dec. 23, 1912. F. D. Monckton, Clerk.

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*In the Circuit Court of the United States, Ninth Circuit, District of Idaho, Northern Division.*

No. 388.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, WILLIAM DWYER, CLARENCE W. ROBNETT, FRANK W. KETTENBACH.

**Bill in Equity.**

To the Honorable Judges of the Circuit Court of the United States, for the District of Idaho:

Charles J. Bonaparte, Attorney General of the United States, for and in behalf of the United States of America, complainant, brings this Bill of Complaint against William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach, and thereupon complains and says:

**FIRST.**

That prior to the acts hereinafter complained of,



the complainant was the owner of the lands hereinafter described, the said lands constituting a part of the public domain and situated within the State and District of Idaho.

That by an Act of Congress of the United States, entitled, "An Act for the Sale of Timber Lands in the States of California, Oregon, Nevada and in Washington Territory," approved June 3, 1878, as amended and extended to all public land States by the Act of Congress of August 4, 1892, it was provided, among other things, in substance that surveyed public lands of the United States within the public land States, valuable chiefly for timber but unfit for cultivation, might be sold to citizens of the United States or persons who had declared their [1\*] intention to become such, in quantities not to exceed 160 acres to any one person or association of persons, at the minimum price of Two Dollars and Fifty Cents (\$2.50) per acre.

It was further provided in said Act as follows:

"That any person desiring to avail himself of the provisions of this act shall file with the register of the proper district a written statement in duplicate, one of which is to be transmitted to the General Land Office, designating by legal subdivision the particular tract of land he desires to purchase, setting forth that the same is unfit for cultivation, and valuable chiefly for its timber or stone; that it is uninhabited; contains no mining or other improvements, except for

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\*Page number appearing at foot of page of original certified Record.

ditch or canal purposes, where any such do exist, save such as were made by or belong to the applicant, nor, as deponent verily believes, any valuable deposit of gold, silver, cinnabar, copper, or coal; that deponent has made no other application under this act; that he does not apply to purchase the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself.”

which statement was required by said Act to be verified by the oath of the applicant before the register or receiver of the land office within the district where the land was situated.

And said Act further provides that:

“If any person taking such oath shall swear falsely in the premises, he shall be subject to all the pains and penalties of perjury and shall forfeit the money which he may have paid for said lands and all right and title to the same; and any grant or conveyance which he may have made, except in the hands of *bona fide* purchasers, shall be null and void.”

And said Act further provided that after the expiration of 60 days’ publication of said application:

“The person desiring to purchase shall furnish to the register of the land office satisfactory



and other unlawful methods, they might unlawfully and [3] fraudulently procure for themselves and for their use, benefit and pecuniary advantage, large quantities of said public lands.

Said unlawful and fraudulent means consisted in procuring persons to avail themselves of the provisions of the Act of Congress hereinbefore referred to, by filing the written statement, and doing the other things required by said Act (and the regulations of the Commissioner of the General Land Office, applicable to said proceeding), under an agreement then and there and theretofore had and entered into between said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, and divers of said persons, wherein and whereby they, the said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, agreed to purchase said lands described in the respective statements and applications of said applicants as soon as said applicants should secure title thereto; and in divers other instances, said unlawful and fraudulent means consisted in procuring persons to avail themselves of the provisions of the Act of Congress hereinbefore referred to, by filing the written statement, and doing the other things required by said Act and the regulations of the Commissioner of the General Land Office, applicable to said proceeding, under an agreement then and there and theretofore had and entered into between said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, and divers of said persons,

wherein and whereby they, the said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett agreed to furnish or procure to be furnished and supplied to said applicant the amount of money necessary to pay all expenses in connection with making said filing and procuring title to said land under said Act, including the sum necessary to pay for said land; whereupon said applicant, as soon as he should obtain title to said lands from the United States, was to deed the said lands to said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, or either of them, or to some person designated by them or either of them, and the said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, were thereupon [4] to pay or procure to be paid to said applicant a sum theretofore, at the making of the agreement aforesaid, decided upon and promised to be paid.

#### FOURTH.

That pursuant to said unlawful and corrupt conspiracy and agreement, and to carry out and effect the object and purpose thereof, the said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett did unlawfully, falsely, fraudulently and corruptly induce and procure Carrie D. Maris, William B. Benton, Joel H. Benton, Henderson F. Dizney, Harry S. Palmer, George W. Harrington, Robert N. Wright, Maud N. Wright, Van W. Robertson, John W. Kilinger, John E. Nelson, Soren Hansen, John H. Little, Ellsworth M. Harrington,



Wren Pierce, Benjamin F. Bashor, Jas. C. Evans, Pearl Washburn, Lon E. Bishop, Joseph B. Clute, Frederick W. Newman, Francis M. Long, John H. Long, Benjamin F. Long, Charles Dent, Charles Smith, George Morrison, Edward M. Hyde, Bertsel H. Ferris, George Ray Robinson, Drury M. Gammon, Chas. W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, George H. Kester, Guy L. Wilson, Frances A. Justice, Fred E. Justice, Edna P. Kester, Elizabeth Kettenbach, William J. White, Elizabeth White, Mamie P. White, Walter E. Daggett, Martha E. Hallett, Daniel W. Greenburg, David S. Bingham, William McMillan, Hattie Rowland, Edgar H. Dammarell, William E. Helkenbery, William Havernick and Geary Van Ardsdalen and divers other persons not necessary to be named here, to apply at the United States Land Office at Lewiston, Idaho, in the land district where said lands are situated, under the provisions of the Act of Congress aforesaid and pursuant to and for the purpose of carrying out the said unlawful, fraudulent and corrupt conspiracy and agreement aforesaid, and for the purpose of obtaining title to large tracts of the public timber lands of the United States, as aforesaid, did cause, induce and procure the said parties, and each of them, to appear before the register or receiver of the United States Land Office at Lewiston, Idaho, and each to make and subscribe, and make oath to the written statement required by said Act of persons desiring to avail [5] themselves of the provisions thereof, and did cause, induce and pro-

cure the said persons, and each of them, then and there to make and subscribe their respective written statements as aforesaid, and to state respectively in substance that he, the applicant, did not apply to purchase the land described in his said statement, on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he had not directly or indirectly made any agreement or contract or in any way or manner with any person or persons whomsoever by which the title which he might acquire from the Government of the United States might inure in whole or in part to the benefit of any person except himself; which said respective applications and each of them were then and there duly filed in the said United States Land Office.

That, thereafter, pursuant to said unlawful and corrupt conspiracy, combination, confederation and agreement, and in furtherance thereof and to carry out and effect the object and purpose thereof, the said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett did induce and procure the persons hereinbefore named, and each of them, to appear before the land office of the United States at Lewiston, Idaho, and to answer certain questions hereinbefore in this complaint set out, prescribed by the Commissioner of the General Land Office, pursuant to the authority contained in the Act aforesaid and each of said persons then and there by the procurement of the said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett did answer said questions in substance and to the effect that he had not sold or trans-



ferred his claim to the land for which he made application to purchase since making his sworn statement, or had directly or indirectly made any agreement or contract in any way or manner with any person whomsoever by which the title which he might acquire from the Government of the United States might inure in whole or in part to the benefit of any person except himself and that he made his entry in good faith for the appropriation of the land exclusively to his own use and not for the use or benefit of any other person, that no other person than himself, nor any firm, corporation or association had any [6] interest in the entry which he was then making, or in the land or in the timber thereon, that he paid out of his own individual funds all the expenses in connection with making said filing, and that he expected to pay for the land with his own money.

#### FIFTH.

That the statements so made by the said Carrie D. Maris, William B. Benton, Joel H. Benton, Henderson F. Dizney, Harry S. Palmer, George W. Harrington, Robert N. Wright, Maud N. Wright, Van W. Robertson, John W. Killinger, John E. Nelson, Soren Hansen, John H. Little, Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Jas. C. Evans, Pearl Washburn, Lon E. Bishop, Joseph B. Clute, Frederick W. Newman, Francis M. Long, John H. Long, Benjamin F. Long, Charles Dent, Charles Smith, George Morrison, Edward M. Hyde, Bertsel H. Ferris, George Ray Robinson, Drury M. Gammon, Charles W. Taylor, Jackson O'Keefe, Edgar

J. Taylor, Joseph H. Prentice, George H. Kester, Guy L. Wilson, Frances A. Justice, Fred E. Justice, Edna P. Kester, Elizabeth Kettenbach, William J. White, Elizabeth White, Mamie P. White, Walter E. Daggett, Martha E. Hallett, Daniel W. Greenburg, David S. Bingham, William McMillan, Hattie Rowland, Edgar H. Dammarell, William E. Helkenbery, William Havernick and Geary Van Ardsdalen, and by each of them, were false, fraudulent and untrue, and were known to the said persons and to the said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett to be false, fraudulent and untrue and the said statements and each of them were made for the purpose of procuring title from the United States to the lands described in the several sworn statements of the persons hereinbefore named, and which lands are hereafter described, pursuant to the unlawful, false, fraudulent and corrupt conspiracy, combination and agreement hereinbefore referred to.

That in truth and in fact, divers of the said several applicants had been supplied and furnished the money with which to pay for said lands and the fees and expenses incident to obtaining title thereto, by the said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, or one or more of them, [7] pursuant to the unlawful, fraudulent and corrupt agreement hereinbefore referred to; and the title to said lands was so obtained by each and all of the several persons hereinbefore named as applicants, for the purpose and with the



understanding that the same should be conveyed at the request of the said defendants as soon as title thereto should be obtained from the United States.

### SIXTH.

And complainant further avers and charges that the said defendants, William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, by their said unlawful, corrupt and fraudulent schemes and practices, and by and through the various persons heretofore, in this bill of complaint, mentioned as employed by them for that purpose, fraudulently obtained and procured the patents of complainant to be issued to the various persons hereinbefore in this bill of complaint mentioned and hereinafter to be mentioned in connection with the several descriptions of said lands to be mentioned and set out. And your complainant further avers and charges that the said pretended patents to the lands hereinafter to be described, were not procured, as the defendants William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett well knew at the time of procuring the same, in compliance with the laws of the United States. And your complainant further avers and charges that in the case of each and every of such tracts of land hereinafter in this bill of complaint described, the act and conduct of the said defendants, William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, and each of them, and each and every of their employees and confederates, were illegal and fraudulent and that the patents procured from this

complainant by and on behalf of said defendants, were and are, in each and every instance, fraudulent and void, as against this complainant, and contrary to equity and good conscience, and being so, ought by this court, to be set aside and held for naught, not only in the hands of said defendants, but in the hands of any other person or persons whomsoever, if not still in the hands of the defendants. [8]

#### SEVENTH.

And complainant avers and charges that the patents so unlawfully and fraudulently procured from complainant by and on behalf of the said defendants, William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, for the several tracts of land hereinafter in this bill of complaint mentioned and described were issued by this complainant in each and every instance, within six years of the filing of this bill of complaint.

#### EIGHTH.

Complainant further avers and charges that pursuant to such unlawful and corrupt combination, conspiracy and agreement and to effect the object and purpose thereof, the said William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett did induce the said several persons hereinbefore and hereinafter named in connection with the description of the said several tracts of land to convey the same, in some instances to George H. Kester, in some instances to William F. Kettenbach, otherwise W. F. Kettenbach, in some instances to George H. Kester and William F. Kettenbach, or Geo. H. Kester and W. F. Kettenbach or Kester and



Kettenbach, in some instances to Clarence W. Robnett, otherwise C. W. Robnett in some instances to Kittie E. Dwyer, in other instances to other person or persons unknown to complainant; but complainant avers that in each and every instance such conveyances were executed for the benefit of said defendants William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, or either or all of them, and other person or persons unknown to complainant, pursuant to the unlawful agreement hereinbefore set out and referred to.

#### NINTH.

And complainant here now sets forth and describes the lands so as aforesaid fraudulently procured to be patented by complainant by and on behalf of the said conspirators, together with the name in each instance of the person through and by whom patents to said lands were so fraudulently obtained from complainant, as hereinbefore set out, the number of said patent, the date of application therefor and the date of the issuance thereof: [9]

No. of patent, 4049.

Date of Application, Nov. 21, 1902.

Issued to CARRIE D. MARIS.

Description: SE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 12, E.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ ,  
NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 13, Tp. 36 N., R. 5 E., B. M.

Date of patent, Feb. 25, 1904.

No. of patent, 4054.

Date of application, Nov. 21, 1902.

Issued to WILLIAM B. BENTON.

Description: S.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec. 15, Tp. 39 N., R. 3 E., B. M.

Date of patent, Feb. 25, 1904.

No. of patent, 4055.

Date of application, Nov. 21, 1902.

Issued to JOEL H. BENTON.

Description: S.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 15, Tp. 39 N., R. 3 E., B. M.

Date of patent, Feb. 25, 1904.

No. of patent, 4074.

Date of application, Nov. 25, 1902.

Issued to HENDERSON F. DIZNEY.

Description: N.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , SW.  $\frac{1}{4}$ , NW.  $\frac{1}{4}$ , Sec. 14, SE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 11, Tp. 40 N., R. 3 E., B. M.

Date of patent, Feb. 25, 1904.

No. of patent, 4192.

Date of application, Jan. 23, 1903.

Issued to HARRY S. PALMER.

Description: E.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 33, Tp. 40 N., R. 4 E., B. M.

Date of patent, July 2, 1904.

No. of patent, 4213.

Date of application, Feb. 11, 1903.

Issued to GEORGE W. HARRINGTON.

Description: W.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , NE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , NW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , Sec. 10, Tp. 36 N., R. 5 E., B. M.

Date of patent, July 2, 1904.

No. of patent, 4249.

Date of application, March 11, 1903.

Issued to ROBERT N. WRIGHT.



Description; Lot 1, SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 1, Tp. 33 N., R. 5 E. B. M.

Date of patent, Aug. 3, 1904. [10]

No. of patent, 4251.

Date of application, Mar. 11, 1903.

Issued to MAUD N. WRIGHT.

Description: Lot 1, SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 3, Tp. 33 N., R. 5 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4352.

Date of application, May 19, 1903.

Issued to VAN W. ROBERTSON.

Description: SW.  $\frac{1}{4}$ , Sec. 10, Tp. 39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4357.

Date of application, May, 22, 1903.

Issued to JOHN W. KILLINGER.

Description: N.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 13, Tp. 39 N., R. 2 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4359.

Date of application, May 22, 1903.

Issued to JOHN E. NELSON.

Description: NE.  $\frac{1}{4}$ , Sec. 24, Tp. 39 N., R. 2 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4377.

Date of application, June 5, 1903.

Issued to SOREN HANSEN.

Description: SE.  $\frac{1}{4}$ , Sec. 10, Tp. 39, N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4385.

Date of application, June 15, 1903.

Issued to JOHN H. LITTLE.

Description: Lot 1, W.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ ,  
Sec. 25, Tp. 39 N., R. 3 E., B. M.

Date of patent Aug. 3, 1904.

No. of patent, 4384.

Date of application, June 15, 1903.

Issued to ELLSWORTH M. HARRINGTON.

Description: Lot 1, NW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ ,  
Sec. 24, Tp. 39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4389.

Date of application, June 17, 1903.

Issued to WREN PIERCE,

Description: SE.  $\frac{1}{4}$ , Sec. 22, Tp. 39 N., R. 3 E., B.  
M.

Date of patent, Aug. 3, 1904. [11]

No. of patent, 4390.

Date of application, June 17, 1903.

Issued to BENJAMIN F. BASHOR.

Description: Lot 4, SW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec.  
24, Tp. 39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4391.

Date of application, June 17, 1903.

Issued to JAS. C. EVANS.

Description: S.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec. 25,  
Tp. 39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.



No. of patent, 4306.

Date of application, April 16, 1903.

Issued to PEARL WASHBURN.

Description: E.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , Sec. 27, Tp.  
40 N., R. 4 E., B. M.

Date of patent, July 2, 1904.

No. of patent, 4392.

Date of application, June 17, 1903.

Issued to LON E. BISHOP.

Description: W.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec. 23, Tp.  
39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, No. 4393.

Date of application, June 17, 1903.

Issued to JOSEPH B. CLUTE.

Description: S.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 26, Tp.  
39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4394.

Date of application, June 17, 1903.

Issued to FREDERICK W. NEWMAN.

Description: S.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 23, Tp.  
39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4395.

Date of application, June 17, 1903.

Issued to FRANCIS M. LONG.

Description: N.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 13, Tp.  
39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904. [12]

No. of patent, 4396.

Date of application, June 17, 1903.

Issued to JOHN H. LONG.

Description: Lot 2, SW.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ ,  
Sec. 24, Tp. 39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4397.

Date of application, June 18, 1903.

Issued to BENJAMIN F. LONG.

Description: S.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , Sec. 18, Tp.  
39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4404.

Date of application, June 23, 1903.

Issued to CHARLES DENT.

Description: N.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , Sec. 14, Tp.  
39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4405.

Date of application, June 23, 1903.

Issued to CHARLES SMITH.

Description: NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 14, SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ ,  
N.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 15, Tp. 39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4411.

Date of application, June 26, 1903.

Issued to GEORGE MORRISON.

Description: NE.  $\frac{1}{4}$ , Sec. 22, Tp. 39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4412.

Date of application, June 26, 1903.



Issued to EDWARD M. HYDE.

Description: NW.  $\frac{1}{4}$ , Sec. 22, Tp. 39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4414.

Date of application, June 26, 1903.

Issued to BERTSEL H. FERRIS.

Description: Lot 3, NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec.  
24, Tp. 39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904. [13]

No. of patent, 4415.

Date of application, June 26, 1903.

Issued to GEORGE RAY ROBINSON.

Description: N.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , Sec. 26, Tp.  
39 N., R. 3 E., B. M.

Date of patent, Aug. 3, 1904.

No. of patent, 4477.

Date of application, Aug. 19, 1903.

Issued to DRURY M. GAMMON.

Description: SE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 26, SW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ ,  
Sec. 25, N.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , Sec. 35, Tp. 40 N., R. 3 E.,  
B. M.

Date of patent, Sept. 9, 1904.

No. of patent, 4762.

Date of application, July 11, 1904.

Issued to CHAS. W. TAYLOR.

Description: Lots 1, 2, E.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , Sec. 30, Tp. 38  
N., R. 6 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4764.

Date of application, July 11, 1904.

Issued to JACKSON O'KEEFE.

Description: W.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec. 23, Tp. 38 N., R. 5 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4765.

Date of application, July 11, 1904.

Issued to EDGAR J. TAYLOR.

Description: Lots 3, 4, E.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec. 18, Tp. 38 N., R. 6 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4766.

Date of application, July 11, 1904.

Issued to JOSEPH H. PRENTICE.

Description: Lots 1, 2, E.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , Sec. 18, Tp. 38 N., R. 6 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4769.

Date of application, July 12, 1904.

Issued to GEORGE H. KESTER.

Description: N.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , Sec. 30, SW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , SE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 19, Tp. 39 N., R. 5 E., B. M.

Date of patent, Dec. 31, 1904. [14]

No. of patent, 4770.

Date of application, July 13, 1904.

Issued to GUY L. WILSON.

Description: Lots 3, 4, NE.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , NW.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 19, Tp. 39 N., R. 5 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4771.

Date of application, July 13, 1904.

Issued to FRANCES A. JUSTICE.



Description: Lots 3, 4, E.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , Sec. 19, Tp. 38  
N., R. 6 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4772.

Date of application, July 13, 1904.

Issued to FRED E. JUSTICE.

Description: E.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , E.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 20, Tp.  
38 N., R. 6 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4773.

Date of application, July 13, 1904.

Issued to EDNA P. KESTER.

Description: N.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , Sec. 14, Tp.  
38 N., R. 5 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4774.

Date of application, July 14, 1904.

Issued to ELIZABETH KETTENBACH.

Description: W.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , W.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 13, Tp.  
38 N., R. 5 E., B. M.

No. of patent, 4775.

Date of application, July 14, 1904.

Issued to WILLIAM J. WHITE.

Description: S.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , Sec. 14, Tp.  
38 N., R. 5 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4776.

Date of application, July 14, 1904.

Issued to ELIZABETH WHITE.

Description: S.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , Sec. 23, Tp. 38 N., R. 5 E., B. M.

Date of patent, Dec. 31, 1904. [15]

No. of patent, 4777.

Date of application, July 14, 1904.

Issued to MAMIE P. WHITE.

Description: N.  $\frac{1}{2}$  SW.  $\frac{1}{4}$ , N.  $\frac{1}{2}$  SE.  $\frac{1}{4}$ , Sec. 14, Tp. 38 N., R. 5 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4778.

Date of application, July 15, 1904.

Issued to WALTER E. DAGGETT.

Description: Lots 2, 3, 7, 8 and 9, Sec. 5, Tp. 40 N. R. 5 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4779.

Date of application, July 15, 1904.

Issued to MARTHA E. HALLETT.

Description: Lots 1, 2, E.  $\frac{1}{2}$  NW.  $\frac{1}{4}$ , Sec. 19, Tp. 38 N., R. 6 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4780.

Date of application, July 15, 1904.

Issued to DANIEL W. GREENBURG.

Description: SW.  $\frac{1}{4}$ , Sec. 17, Tp. 39 N., R. 5 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4781.

Date of application, July 15, 1904.

Issued to DAVID S. BINGHAM.

Description: SE.  $\frac{1}{4}$ , Sec. 17, Tp. 39 N., R. 5 E., B. M.

Date of patent, Dec. 31, 1904.



No. of patent, 4784.

Date of application, July 18, 1904.

Issued to WILLIAM McMILLAN.

Description: SE.  $\frac{1}{4}$ , Sec. 21, Tp. 39 N., R. 5 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 4785.

Date of application, July 18, 1904.

Issued to HATTIE ROWLAND.

Description: SE.  $\frac{1}{4}$  NW.  $\frac{1}{4}$ , S.  $\frac{1}{2}$  NE.  $\frac{1}{4}$ , NE.  $\frac{1}{4}$

SE.  $\frac{1}{4}$ , Sec. 15, Tp. 38 N., R. 5 E., B. M.

Date of patent, Dec. 31, 1904. [16]

No. of patent, 4799.

Date of application, July 25, 1904.

Issued to EDGAR H. DAMMARELL.

Description: NE.  $\frac{1}{4}$ , Sec. 19, Tp. 38 N., R. 6 E., B. M.

Date of patent, Dec. 31, 1904.

No. of patent, 5015.

Date of application, Jan. 20, 1905.

Issued to WILLIAM E. HELKENBERY.

Description: NW.  $\frac{1}{4}$  SW.  $\frac{1}{4}$ , Sec. 28, NE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ ,

SE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ , Sec. 29, Tp. 39 N., R. 5 E., B. M.

Date of patent, May 29, 1907.

No. of patent, 4635.

Date of application, Jan. 6, 1904.

Issued to WILLIAM HAVERNICK.

Description: SE.  $\frac{1}{4}$  SE.  $\frac{1}{4}$ , Sec. 23, NE.  $\frac{1}{4}$  NE.  $\frac{1}{4}$ ,

Sec. 26, Tp. 37 N., R. 2 E., B. M.

Date of patent, Nov. 1, 1904.

No. of patent, 4641.

Date of application, Jan. 11, 1904.

Issued to GEARY VANARDSDALEN.

Description: NE.  $\frac{1}{4}$ , Sec. 25, Tp. 37 N., R. 5 E., B. M.

Date of patent, Nov. 1, 1904.

TENTH.

That complainant is informed and believes and therefore avers that the said defendant, Frank W. Kettenbach, claims some interest in said lands, the exact nature of which is to complainant unknown, but that said claim is without right and that if any interest has been acquired by the said Frank W. Kettenbach in and to any of the lands herein mentioned, the same was acquired with a knowledge that the title to said lands was fraudulently obtained from the United States. [17]

Forasmuch, therefore, as the complainant has been so as above cheated and defrauded of its valuable lands and is remediless at and by the strict rules of the common law, and is only relievable in a court of equity wherein such matters are fully cognizable and relievable; and to the end that the said William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach may full, true, direct and certain answers make, according to the best of their knowledge, information and belief, to all and singular the matters and charges aforesaid, but not on oath, their answer on oath being hereby expressly waived, your complainant prays as follows:

That the said William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach and the several persons hereinbefore named in connection with the description of said lands, may be held, adjudged and decreed to



have defrauded the complainant of the lands and each and every description thereof hereinbefore set forth as patented by complainant to the several persons hereinbefore named, and that by reason of such fraud, the patents issued to them, or either of them, or to others in their behalf, be declared void, and as such, be held for naught and set aside, and the said lands restored to the public domain of the complainant; and the said defendants, and each of them, be held to pay into the treasury of complainant, all such reasonable sums of money as it may have found necessary to lay out and expend in and about discovering and establishing the fraud as is hereinbefore set forth and charged, and that this complainant may have all such further relief in the premises as may be conformable to equity and good conscience, and such as seems proper to this Honorable Court.

[18]

May it please your Honors to grant unto the complainant, a writ of subpoena, issuing out of and under the seal of this Honorable Court, to be directed to the said William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach, commanding them, and each of them, by a certain day, and under a certain penalty therein to be inserted, to be and appear before this Honorable Court, and then and there to answer the premises and further, to stand to and abide by such order and decree therein as shall be agreeable to equity and good conscience, and your

complainant will ever pray.

CHARLES J. BONAPARTE,  
Attorney General of the United States,  
N. M. RUICK,  
United States Attorney, District of Idaho,  
MILES S. JOHNSON,  
Assistant United States Attorney, District of Idaho,  
Solicitors for Complainant.

[Endorsed]: Bill of Complaint. No. 388. Filed  
Oct. 14, 1907. A. L. Richardson, Clerk. N. M.  
Ruick, U. S. Atty., Boise, Idaho. [19]

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*In the Circuit Court of the United States for the  
Northern Division of the District of Idaho.*

IN EQUITY —No. 388.

THE UNITED STATES OF AMERICA,  
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KES-  
TER, WILLIAM DWYER, CLARENCE W.  
ROBNETT and FRANK W. KETTEN-  
BACH,

Defendants.

**Subpoena ad Respondendum.**

The President of the United States of America, to  
William F. Kettenbach, George H. Kester,  
William Dwyer, Clarence W. Robnett and  
Frank W. Kettenbach, Greeting:

You and each of you are hereby commanded that  
you be and appear in said Circuit Court of the

United States, at the courtroom thereof, in Moscow, in said District, on the first Monday of December next, which will be the second day of December, A. D. 1907, to answer the exigency of a Bill of Complaint exhibited and filed against you in our said court, wherein The United States of America is complainant and you are defendants, and further to do and receive what our said Circuit Court shall consider in this behalf, and this you are in no wise to omit under the pains and penalties of what may befall thereon.

And this is to COMMAND you, the MARSHAL of said District, or your DEPUTY, to make due service of this our WRIT of SUBPOENA and to have then and there the same.

Hereof fail not.

Witness the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court [20] of the United States, and the seal of our said Circuit Court affixed at Boise in said District, this 18 day of October, in the year of our Lord one thousand nine hundred and seven and of the Independence of the United States the one hundred and thirty-second.

[Seal]

A. L. RICHARDSON,

Clerk.

I hereby certify that I received the within Subpoena Ad Respondendum at Lewiston, Idaho, on the 24th day of October, 1907, and that I served the same upon William F. Kettenbach, Clarence W. Robnett and William Dwyer on the 25th day of October, 1907, and upon F. W. Kettenbach on the 26th



day of October, 1907, the defendants named therein, at Lewiston, Nez Perce Co., Idaho, by handing to and leaving with each of them personally, a certified copy of the Subpoena Ad Respondendum, together with a certified copy of the complaint. I further certify that after due and diligent search made George H. Kester, another defendant named therein could not be found within the District of Idaho.

R. ROUNDS,

U. S. Marshal.

By Louis D. Schattner,

Deputy.

Dated at Lewiston, Idaho, this 5th day of December, 1907.

[Endorsed]: Filed Dec. 7, 1907. A. L. Richardson, Clerk. [21]

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*In the Circuit Court of the United States, Ninth Circuit, District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEO. H. KESTER,  
WILLIAM DWYER, CLARENCE W. ROBBETT, and FRANK W. KETTENBACH.

**Demurrer to Bill in Equity.**

To the Honorable Judges of the Circuit Court of the United States for the District of Idaho:

Come now William F. Kettenbach, Geo. H. Kester, William Dwyer and Clarence W. Robnett, and demur

to the Bill in Equity on file herein and for cause of demurrer allege:

## 1.

That said bill does not state facts sufficient to constitute a cause of action against these demurring defendants or either thereof.

## 2.

That there is a misjoinder of parties defendant in said bill and such misjoinder consists in this to wit:

That the said William F. Kettenbach, Geo. H. Kester and William Dwyer are improperly joined in a bill with the defendants Clarence W. Robnett and Frank W. Kettenbach, no concert of action appearing from the bill and no allegations wherein the said parties can be made jointly liable for any act or violation of law or the rules of equity in any way or manner or at all. [22]

## 3.

That said bill is ambiguous, unintelligible, indefinite and uncertain, and that such uncertainty consists in this to wit:

It does not appear therefrom whether said land or any part thereof was ever transferred to these demurring defendants or either thereof, or that the same or any part thereof has ever been transferred by the original entrymen to these demurring defendants or to any other person.

## 4.

That said bill does not state facts sufficient to confer jurisdiction upon the above-entitled court to hear and determine the matters attempted to be raised and pleaded therein, and that said bill does

not state facts sufficient to show that the above-entitled court has jurisdiction over any of the subject matter contained, or pleaded therein.

5.

That said bill as a whole does not state facts sufficient to constitute a cause of action against these demurring defendants or either thereof.

WHEREFORE, William F. Kettenbach, Geo. H. Kester, William Dwyer and Clarence W. Robnett, demand judgment on demurrer.

GEO. W. TANNAHILL,

Solicitor for Defendants William F. Kettenbach, Geo. H. Kester, William Dwyer, and Clarence W. Robnett, Residing at Boise, Idaho.

State of Idaho,

County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, upon oath says, that he is one of the solicitors for the demurring defendants above named, and that said demurrer is made [23] in good faith, and not for the purpose of delay and is as affiant verily believes well founded in point of law.

GEO. W. TANNAHILL.

Subscribed and sworn to before me this 29 day of November, A. D. 1907.

JOHN B. ANDERSON,

Notary Public in and for Nez Perce County, State of Idaho.

Service of foregoing demurrer accepted by receipt of copy admitted this 29 day of Nov., 1907.

MILES S. JOHNSON,

Assistant U. S. District Attorney and Solicitor for Complainant.



[Endorsed]: Demurrer to Bill in Equity. No. 388. Filed Dec. 2d, 1907. A. L. Richardson, Clerk.  
[24]

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*In the Circuit Court of the United States, Ninth Circuit, District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEO. H. KESTER,  
WILLIAM DWYER, CLARENCE W. ROBBETT, and FRANK W. KETTENBACH,  
Defendants.

**Amended Demurrer to Bill in Equity.**

To the Honorable Judges of the Circuit Court of the United States for the District of Idaho, Northern Division.

Come now William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, by leave of Court first had and obtained, and file this their amended demurrer to the Bill in Equity on file herein, and for cause of Demurrer allege:

1.

That said bill does not state facts sufficient to constitute a cause of action against these demurring defendants or either thereof.

2.

That there is a misjoinder of parties defendant in said bill, and such misjoinder consists in this: That said William F. Kettenbach, Geo. H. Kester and

William Dwyer are improperly joined in a bill with the defendants Clarence W. Robnett and Frank W. Kettenbach, no concert of action appearing from the bill and no allegations wherein the said parties can be made jointly liable for any act or violation of law; and it does not appear from said bill that the said defendants were [25] to share jointly or at all in the proceeds of said land or the money received therefrom, or contributed jointly toward the procuring of said parcels or either thereof; and it does not appear from said bill that the said defendants are jointly liable for any act or violation of law or the rules of equity in any way or manner whatsoever.

## 3.

That said bill is ambiguous, unintelligible, indefinite and uncertain, and that such uncertainty consists in this, to wit:

It does not appear therefrom whether said land or any part thereof was ever transferred to these demurring defendants or either thereof, or that the same or any part thereof has ever been transferred by the original entrymen to these demurring defendants or to any other person or persons, and it does not appear therefrom that the said defendants, or either thereof, are the present owners of said land or any part thereof.

## 4.

That said bill does not state facts sufficient to confer jurisdiction upon the above-entitled court to hear and determine the matters attempted to be raised and pleaded therein, and that the said bill does not state facts sufficient to show that the above-

entitled court has jurisdiction over any of the subject matter contained or pleaded therein, or jurisdiction to hear and determine the same.

## 5.

That said bill is further indefinite and uncertain, and that such uncertainty consists in this to wit:

That it does not appear therefrom, in what way or manner the said defendants acted or what overt acts [26] were committed by either of said defendants in procuring title to said tracts of land or any part thereof, or the manner in which the said land was acquired.

## 6.

That said bill as a whole does not state facts sufficient to constitute a cause of action against these demurring defendants or either thereof.

WHEREFORE, William F. Kettenbach, Geo. H. Kester and William Dwyer, and Clarence W. Robnett, demand judgment on their Amended Demurrer.

GEO. W. TANNAHILL,

Solicitor for Defendants William F. Kettenbach,  
Geo. H. Kester, William Dwyer and Clarence  
W. Robnett, Residing at Lewiston, Idaho.

State of Idaho,

County of Latah,—ss.

Geo. W. Tannahill, being duly sworn upon oath says, that he is the solicitor for the demurring defendants above named, and that said demurrer is made in good faith and not for the purpose of delay, and is as affiant verily believes well founded in point of law.

GEO. W. TANNAHILL.



Subscribed and sworn to before me this 20th day of May, A. D. 1908.

A. L. RICHARDSON,  
Clerk.

[Endorsed]: Amended Demurrer to Bill in Equity.  
No. 388. Filed May 20, 1908. A. L. Richardson,  
Clerk. [27]

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*In the Circuit Court of the United States, Ninth Cir-  
cuit, District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,  
Complainant,  
vs.

WILLIAM F. KETTENBACH, GEO. H. KESTER,  
WILLIAM DWYER, CLARENCE W. ROB-  
NETT, and FRANK W. KETTENBACH,  
Defendants.

**Amended Motion to Strike.**

Come now the defendants herein, William F. Kettenbach, George H. Kester, William Dwyer and Clarence W. Robnett, by leave of Court first had and obtained, and file this their Amended Motion to Strike Out of and from the plaintiff's Bill in Equity on file herein, the following portions:

1.

All of paragraph one, and especially all that portion of paragraph one, beginning with the word "said," the same being the first word in line three from the bottom of page 2, and ending with the word "office," the same being the last word in said paragraph one.

Upon the ground and for the reason that the same is redundant, surplusage, irrelevant and immaterial.

2.

Strike out all of the 2d paragraph of said Bill in Equity.

Upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

3.

Strike out all of that portion of paragraph 3, [28] beginning with the word "and," the same being next to the last word in line 6 from the top of page 4, and ending with the word "agreement," the same being the 7th word in line 8 from the top of page 4.

Upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

4.

Strike out all of that portion of paragraph 3 beginning with the word "then," the same being the 8th word in line 8 from the top of page 4 and ending with the word "thereto," the same being the 6th word in the 15th line from the top of page 4.

Upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

5.

Strike out all that portion of paragraph 3, beginning with the word "and," the same being the 7th word in line 15 from the top of page 4 and ending with the word "paid," the same being the last word in said paragraph 3.

Upon the ground that the same is redundant, sur-

plusage, irrelevant and immaterial.

6.

Strike out all of paragraph 4 of said bill, upon the ground that the same is surplusage, redundant, irrelevant and immaterial

7.

Strike out all that portion of paragraph 4, beginning with the word "did," the same being the 9th word in line 5 from the top of page 6, and ending with the word "office," the same being the last word in line 14, from the top of page 6.

And also that portion of paragraph 4, beginning [29] with the word "that," the same being the first word in line 15 from the top of page 6, and ending with the word "money," the same being the last word in paragraph 4.

Upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

8.

Strike out all of paragraph 5 of said Bill in Equity, and also all that portion of paragraph 5, beginning with the word "that," the same being the first word in line 5 from the bottom of page 7 and ending with the word "states," the same being the last word in paragraph 5.

Upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

9.

Strike out all of paragraph 6, and all of that portion of paragraph 6, beginning with the word "but," the same being the 7th word in line 2 from the bottom of page 8 and ending with the word "defendants,"



the same being the last word in the last line of page 8.

Upon the ground that the same is surplusage, redundant, irrelevant and immaterial.

10.

Strike out all of paragraph 8 upon the ground that the same is surplusage, redundant, irrelevant and immaterial.

11.

Strike out all of paragraph 9, except that portion thereof beginning with the word "no," the same being the first word in line 6 from the bottom of page 14 and ending with the figures "1904," the same being the last word or figures in the last line on page 14.  
[30]

Upon the ground that the same is surplusage, redundant, irrelevant and immaterial, and if material for any purpose are matters of evidence.

Upon the argument of said motion, there will be used the Bill in Equity heretofore filed herein, the defendants' original notice of motion heretofore served and filed herein and all of the files and records in the cause.

GEO. W. TANNAHILL,

Solicitor for Defendants William F. Kettenbach,

Geo. H. Kester, William Dwyer, and Clarence

W. Robnett, Residing at Lewiston, Idaho.

State of Idaho,

County of Latah,—ss.

Geo. W. Tannahill, being duly sworn upon oath says, that he is the solicitor for the defendants in the foregoing notice of motion, and that said motion is

made in good faith and not for the purpose of delay, and is as affiant verily believes well founded in point of law.

GEO. W. TANNAHILL.

Subscribed and sworn to before me this 19th day of May, A. D. 1908.

A. L. RICHARDSON,  
Clerk.

[Endorsed]: Amended Motion to Strike. No. 388. Filed May 20, 1908. A. L. Richardson, Clerk.  
[31]

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*In the Circuit Court of the United States, Ninth Circuit, District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,  
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, WILLIAM DWYER, CLARENCE W. ROBNETT, FRANK W. KETTENBACH,  
Defendants.

**Opinion on Amended Demurrer and Amended Motion.**

CHARLES J. BONAPARTE, N. M. RUICK,  
and MILES S. JOHNSON, Solicitors for  
Complainant.

GEORGE W. TANNAHILL, Solicitor for Defendants.

DIETRICH, District Judge:

The amended demurrer and amended motion of the defendants were submitted at the spring term, with leave to both parties to file written argument within thirty days.

The demurrer should be sustained upon the third ground. The purpose of the bill is to set aside the patents and re-invest the United States with title to numerous tracts of timber land. Complainant alleges a conspiracy between the defendants to induce various persons to enter and acquire patents to several tracts of land. [32] The purpose of the conspiracy was consummated and patents were issued to a large number of entrymen. It is alleged that some of the titles thus procured from the Government were conveyed to the defendants severally or jointly. It is also alleged that the patents, having been wrongfully procured from the United States, "ought by this court to be set aside and held for naught, not only in the hands of said defendants but in the hands of any other person or persons whomsoever, if not still in the hands of the defendants." It is also expressly alleged that in some instances the titles thus acquired by the entrymen were conveyed to defendants, and "to Kitty E. Dwyer, in other instances to other person or persons unknown to complainant." Kitty E. Dwyer is not made a defendant, and not only is there a failure to allege what particular lands were conveyed to any of the defendants, but the bill is wholly silent as to present ownership of all of the lands. All persons claiming an interest in the land should be made parties, and



it follows that it should clearly appear that the defendants are the present owners.

The bill was filed before the rendition by the Supreme Court of the United States of the decision in the case of United States vs. Williamson, and it is not improbable that the complainant will desire to reform the bill by eliminating certain portions thereof. Moreover, at the oral argument it was suggested by counsel for the Government that it was not thought that the defendant Frank W. Kettenbach is a proper party defendant, and that it was desired to amend by substituting the name of some corporation in his place. The other grounds of the demurrer will therefore be overruled without prejudice to a consideration of the same objections, if [33] they should be interposed to an amended bill.

The motion to strike out certain portions of the bill will be denied. Even if it be assumed that such motion is proper, it is unnecessary to consider it at this time, in view of the ruling upon the demurrer.

Dated November 7th, 1908.

FRANK S. DIETRICH,  
District Judge.

[Endorsed]: Opinion on Amended Demurrer and Amended Motion. No. 388. Filed November 7th, 1908. A. L. Richardson, Clerk. [34]

*In the Circuit Court of the United States for the District of Idaho, Northern Division.*

No. 388—Northern Division.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEO. H. KESTER, WILLIAM DWYER, CLARENCE W. ROBNETT and FRANK W. KETTENBACH,

Defendants.

**Order [Sustaining Demurrer to Complaint on Third Ground and Denying Motion to Strike, etc.].**

On this day was announced the decision of the Court upon the amended demurrer to the complaint herein and upon the amended motion to strike out part of the complaint in said cause heretofore argued and submitted, and it is ordered that said demurrer be and is hereby sustained upon the third ground therein stated and overruled upon the other grounds without prejudice to a consideration of the same objections, if they should be interposed to an amended bill, and ordered that the said motion to strike out portions of the said bill of complaint be, and the same is hereby, denied.

Dated November 7, 1908. [35]

*In the Circuit Court of the United States, for the  
Ninth Judicial Circuit, District of Idaho, North-  
ern Division.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.  
KESTER, WILLIAM DWYER, CLAR-  
ENCE W. ROBNETT, and FRANK W.  
KETTENBACH,

Defendants.

**Notice of Motion to Dismiss Action.**

To the Plaintiff Above Named, and to C. H. Lingen-  
felter, United States District Attorney for the  
District of Idaho, and by Virtue Thereof, At-  
torney for Complainant, and to Each of You:

TAKE NOTICE: That at the courtroom of the  
above-entitled court, in the city of Moscow, Latah  
County, State of Idaho, within and for the District  
of Idaho, Northern Division, on the first day of the  
convening of the May term of the above-entitled  
court, to wit, on the 10th day of May, A. D. 1909, at  
the hour of ten o'clock A. M. of said day, or as soon  
thereafter as counsel can be heard, and in case said  
court is continued to a later date, then on the first  
day of the convening of said Court at the place afore-  
said, at the hour of ten o'clock A. M. of said day,  
the defendants herein, William F. Kettenbach,  
George H. Kester, William Dwyer, and Clarence W.  
Robnett will move the above-entitled court to dismiss



this action upon the following grounds, and for the following reasons:

1.

Failure to prosecute the action with diligence, or at all.

2.

That the petition in said action was filed in the [36] above-entitled court on the 19th day of October, A. D. 1907, and has remained on file therein since said time; that the defendants herein, thereafter, and within the time allowed by law, filed their amended demurrer and motion to strike certain portions of said bill in equity, which is now on file in the above-entitled court in said cause.

3.

That thereafter, the said cause was argued and submitted to the Court, at Moscow at the May, 1908, term thereof; and thereafter on Nov. 7th, 1908, the above-entitled Court rendered its decision thereon sustaining said amended demurrer, granting the complainant the privilege of filing an amended bill.

4.

That on Nov. 7, 1908, the above-entitled court made and entered its order sustaining said demurrer and granting to the complainant the privilege of filing an amended bill, but that no amended bill of any kind or nature has ever been served or filed; and the action has never been prosecuted with diligence as required by law, and the rules of the above-entitled court.

This motion is made and based upon the minutes of the Court, the certificate of the Clerk attached

hereto, and the files and records in the above-entitled cause.

GEO. W. TANNAHILL,  
Solicitor for Defendants, Wm. F. Kettenbach, Geo.  
H. Kester, Wm. Dwyer and Clarence W. Rob-  
nett, Residing at Lewiston, Idaho.

[Endorsed]: Notice of Motion to Dismiss Action—  
No. 388. Filed April 23, 1909. A. L. Richardson,  
Clerk. [37]

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**[Certificate That No Amended Bill or Other  
Pleading was Filed.]**

THE UNITED STATES OF AMERICA,  
Complainant,  
vs.

WILLIAM F. KETTENBACH, GEORGE H.  
KESTER, WILLIAM DWYER, CLAR-  
ENCE W. ROBNETT, and FRANK W.  
KETTENBACH,  
Defendants.

**CERTIFICATE OF CLERK.**

United States of America,  
District of Idaho,—ss.

I, A. L. Richardson, Clerk of the above-entitled  
court, do hereby certify that on Nov. 7, A. D. 1908,  
an order was made by the above-entitled court sus-  
taining the amended demurrer to the bill in the above-  
entitled cause, and that no amended bill or other  
pleading has been filed by the complainant in said  
cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the above-entitled court this 23d day of April, A. D. 1909.

A. L. RICHARDSON,  
Clerk of the United States Court. [38]

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*In the Circuit Court of the United States, for the  
Ninth Judicial Circuit, District of Idaho, North-  
ern Division.*

THE UNITED STATES OF AMERICA,  
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.  
KESTER, WILLIAM DWYER, CLAR-  
ENCE W. ROBNETT, and FRANK W.  
KETTENBACH.

**Motion [to Dismiss Action].**

Comes now the defendants herein, William F. Kettenbach, George H. Kester, William Dwyer, and Clarence W. Robnett, pursuant to the foregoing motion, and moves the above-entitled court to dismiss this action upon the ground and for the following reasons severally stated in the foregoing notice of motion.

This motion is made and based upon the foregoing notice of motion, the certificate of clerk attached thereto, minutes of the Court, and all the files and



records in the action.

GEO. W. TANNAHILL,

Solicitor for Defendants, Wm. F. Kettenbach, Geo.  
H. Kester, Wm. Dwyer, and Clarence W. Rob-  
nett, Residing at Lewiston, Idaho. [39]

State of Idaho,

County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, upon oath  
says that he is the solicitor for the defendants named  
in the foregoing Notice of Motion and Motion; and  
that the said motion is made in good faith and not  
for the purpose of delay, and is as affiant verily be-  
lieves well founded in point of law.

GEO. W. TANNAHILL.

Subscribed and sworn to before me this 20th day of  
April, A. D. 1909.

[N. P. Seal] SAMUEL O. TANNAHILL,  
Notary Public in and for Nez Perce County, State  
of Idaho.

[Endorsed]: No. 388. Filed April 23, 1909. A.  
L. Richardson, Clerk. [40]

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*In the Circuit Court of the United States for the  
District of Idaho, Northern Division.*

No. 388—Northern Division.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Denying Motion to Dismiss and Allowing  
Application for Leave to File Amended Bill,  
etc.].**

It is hereby ordered that the defendants' motion to dismiss this cause heretofore submitted be, and the same is hereby denied and the plaintiff's application for leave to file an amended bill of complaint herein is allowed, and the said plaintiff is given until the 25th inst. to file and serve its amended bill of complaint and the defendants are given thirty days thereafter in which to demur to said bill of complaint, or until July 1, 1909, to answer the same.

Dated May 12, 1909. [41]

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**[Amended Bill in Equity.]**

*In the Circuit Court of the United States, for the  
District of Idaho, Northern Division.*

No. 388.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.  
KESTER, WILLIAM DWYER, CLAR-  
ENCE ROBNETT, FRANK W. KETTEN-  
BACH,

Defendants.

**BILL IN EQUITY.**

To the Honorable, the Judges of the Circuit Court  
of the United States for the District of Idaho:

The United States of America, the complainant in

the above-entitled cause, by George W. Wickersham, the Attorney General of the United States of America, by leave of the Court in that behalf had and obtained, files this, the said complainant's amended bill of complaint, in the said cause as follows:

The said complainant respectfully represents to this Court:

I. That prior to the acts hereinafter complained of, the complainant was the owner of the lands hereinafter described, the said lands constituting a part of the public domain and situated within the State and District of Idaho.

That by an Act of Congress of the United States, entitled, "An Act for the sale of timber lands in the States of California, Oregon, Nevada and in Washington Territory," approved June 3, 1878, as amended and extended [42] to all public land States by the Act of Congress of August 4, 1892, it was provided, among other things, in substance that surveyed public lands of the United States within the public land States, valuable chiefly for timber but unfit for cultivation might be sold to citizens of the United States or persons who had declared their intention to become such, in quantities not to exceed 160 acres to any one person or association of persons, at the minimum price of Two Dollars and Fifty Cents (\$2.50) per acre;

It was further provided in said Act as follows:

"That any person desiring to avail himself of the provisions of this Act shall file with the register of the proper district a written statement in duplicate, one of which is to be trans-



mitted to the General Land Office, designating by legal subdivision the particular tract of land he desires to purchase, setting forth that the same is unfit for cultivation, and valuable chiefly for its timber or stone; that it is uninhabited; containing no mining or other improvements, except for ditch or canal purposes where any such do exist, save such as were made by or belong to the applicant, nor, as deponent verily believes, any valuable deposit of gold, silver, cinnabar, copper, or coal; that deponent has made no other application under this Act; that he does not apply to purchase the same on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part to the benefit of any person except himself."

which statement was required by said Act to be verified by the oath of the applicant before the register or receiver of the Land Office within the district where the land was situated;

And said Act further provides that:

"If any person taking such oath shall swear [43] falsely in the premises, he shall be subject to all the pains and penalties of perjury and shall forfeit the money which he may have paid for said lands and all right and title to the same; and any grant or conveyance which he

may have made, except in the hands of bona fide purchasers, shall be null and void.”

And said Act further provided that after the expiration of 60 days’ publication of said application:

“The person desiring to purchase shall furnish to the register of the land office satisfactory evidence . . . . that the land is of the character contemplated in this Act unoccupied and without improvements other than those excepted, either mining or agricultural, and that it apparently contains no valuable deposits of gold, silver, cinnabar, copper or coal; and upon payment to the proper officer of the purchase money of said land, together with the fees of the register and receiver, . . . . the applicant may be permitted to enter said tract, and, on the transmission to the General Land Office of the papers and testimony in the case, a patent shall issue thereon.”

Said Act further provided that effect should be given to its provisions by regulations to be prescribed by the Commissioner of the General Land Office.

II. That pursuant to the authority given by said Act, the Commissioner of the General Land Office prescribed and promulgated certain regulations to give effect to the provisions of said Act, among other, the following:

That after the expiration of the 60 days’ publication, the person desiring to purchase the land described in his application to purchase should under oath, make answer to certain questions as follows:

“Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner, with any person whomsoever by which the title which you may acquire from the Government of the United States, may inure, in whole or in part to the benefit of any person except yourself?”

And [44]

“Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?”

And

“Has any other person than yourself, or has any firm, corporation, or association, any interest in the entry you are now making, or in the land, or in the timber thereon?”

Also the following:

“Did you pay, out of your own individual funds, all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?”

And

“Where did you get the money with which to pay for this land and how long have you had the same in your actual possession?”

III. That heretofore, to wit, on the first day of July, in the year 1902, and at divers other times before and after that day, and before the making of the several entries hereinafter mentioned and des-



ignated, in the State of Idaho, William F. Kettenbach, George H. Kester, William Dwyer, Clarence Robnett, and Frank W. Kettenbach, hereinbefore and in the caption of this bill named as defendants and heretofore, by the original bill filed in this cause and by process duly issued and served therein, made parties defendant, did unlawfully and corruptly combine, conspire, confederate and agree together, and with each other and with divers other persons, some of whom are hereinafter named and others of whom are to the complainant unknown, and did form, make and enter into an unlawful, corrupt and fraudulent conspiracy, combination and agreement with each other and with the other persons aforesaid, for the purpose and to the end of defrauding the complainant of the title and ownership of divers large tracts of public land then owned by the complainant and lying in the district [45] of public lands subject to entry at the land office of the United States located at Lewiston in the State of Idaho, and for the purpose and to the end of defrauding the complainant out of the use, occupation and possession of the said tracts of public land, and for the purpose and to the end of acquiring by and for the said defendants, and by and for each of them, the title to larger areas of such public lands than could be, under and in accordance with the laws of the United States providing for and regulating the disposal of such public lands, lawfully acquired by the said defendants, collectively or individually, and for the purpose of accomplishing the said ends and of so defrauding the said complainant by divers fraudulent and unlawful means, that

is to say, by means of false, fraudulent and unlawful entries to be made of the aforesaid tracts of public land at the land office aforesaid, and by means of perjury, the subornation of perjury, the procurement of false swearing, and by means of other falsehoods, false pretenses and misrepresentations, whereby the officers of the United States should be deceived and imposed upon and should be induced and procured to divest the United States of its title to the said lands and to convey the said title of the United States to divers persons not lawfully entitled thereto contrary to the laws of the United States and for the benefit, advantage and profit of the said defendants.

IV. That as a part of the said conspiracy and agreement so far as aforesaid made and entered into by the said defendants, and as a part of the said unlawful and fraudulent means whereby the said unlawful purposes of the said conspiracy were to be effected, it was, at the times and the place aforesaid by the said defendants, mutually agreed, designed and contemplated that they, the [46] said defendants, should persuade, employ and otherwise induce and procure a large number of other persons severally to purchase and to make entries of divers tracts of the public lands aforesaid under and in pretended and apparent accordance with the aforesaid Act of Congress approved on June 3, 1878, as amended by the Act of Congress approved on August 4, 1892; that before the said other persons should apply to enter and purchase such lands or should take any steps or initiate any proceedings to that end, and before the making of such entries and purchases, and as a means



of persuading and inducing the said other persons to make such entries and purchases, the said defendants should make and enter into certain agreements, contracts and understandings with the said other persons, severally, whereby and by the terms of which agreements, contracts and understandings, the said defendants or some of them, should agree and contract to buy of the said other persons, severally and the said other persons, severally should agree and contract to sell to the said defendants, or to some of them, the respective tracts so to be entered and purchased by the said other persons when and so soon as the said other persons should obtain from the United States the titles to the said tracts by them to be entered and purchased, or shortly thereafter; that, thereupon and after the making of such unlawful contracts and agreements and while the same should subsist and continue, the said defendants should cause and procure the said other persons severally to apply at the land office aforesaid to make entries of and to purchase divers tracts of the said public lands in professed accordance with the statutes aforesaid, and should cause and procure each of the said persons so applying, at the time of making his application to enter, and in connection with and as a part of such application, to execute, sign, make [47] oaths to and file in the said land office a sworn statement of the character, substance, tenor and purport prescribed by the said Act of Congress approved on June 3, 1878, which Act is hereinbefore mentioned, stated and in part recited, in which statement such applicant should declare and on his oath



represent, among other things, that he, the said applicant, did not apply to purchase the land by him applied for on speculation, but in good faith to appropriate the same to his own exclusive use and benefit, and that he had not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself, the said defendants intending, designing and contemplating that each of the said other persons so to be induced to make such applications and to file such sworn statements should in doing so commit and be guilty of wilful and corrupt perjury and should swear falsely and corruptly and should defraud the United States and fraudulently deceive and impose upon the officers of the United States charged with the administration of the laws regulating the disposal of the public lands, inasmuch and because in truth and in fact each of the said persons so to be induced to make such applications should, before the making of his said application and the filing of his said sworn statement, as the said defendants intended and contemplated, have made with the said defendants or some of them the agreement and contract aforesaid by the terms of which such person so to make application agreed to sell to the defendants or to some of them, and the defendants or some of them agreed to buy, the land and the title which such person should acquire from the United States by means of the application and entry by him to be made. [48]

V. That as a further part of the said conspiracy and agreement so as aforesaid made and entered into by the said defendants, and as a further part of the unlawful and fraudulent means whereby the said unlawful purposes of the said conspiracy were to be effected, it was, at the time and the place aforesaid by the said defendants, mutually agreed, designed and contemplated that they, the said defendants, should cause and procure the said other persons, hereinbefore mentioned and such who were as aforesaid to be induced to apply to enter and purchase the tracts of public lands aforesaid, to make such publication and advertisement as are prescribed by the statute hereinbefore mentioned and in part recited, and after such publication and after the period of sixty days by the said statute prescribed, to appear before the proper officer or officers of the said land office and to make such proof before the said officers as is prescribed by the said statute, and then and there to answer on oath and in writing the interrogatories which were as aforesaid prescribed by the commissioner of the general land office to be propounded to all persons seeking to make entries of public lands under the statute hereinbefore mentioned; and it was intended, designed and contemplated by the said defendants that each of the said other persons so appearing and answering should, in answer to the said interrogatories when the same should be propounded to him, on his oath declare, represent and swear, among other things, that he had not, since the making of the sworn statement previously as aforesaid made and filed by him in



applying to make entry, sold or transferred his claim to the land sought by him to be entered; and that he, the said applicant, had not, at the time of his appearing and answering the said interrogatories, directly or indirectly made any contract or agreement or contract in any way or manner, with any person whomsoever, by which the title [49] sought by such applicant to be acquired might inure, in whole or in part, to the benefit of any person except himself; and that he, the said applicant, was at the time last aforesaid making his intended entry in good faith for the appropriation of the land exclusively to his own use and not for the use and benefit of any other person; and that no other person than himself, the said applicant, and that no firm, corporation or association, had, at the time last aforesaid, any interest in the said entry or in the land sought to be entered or in the timber upon the said land; the said defendants intending, designing and contemplating that each of the said other persons so to be caused and procured to answer the said interrogatories in the manner and to the effect last stated should in doing so commit and be guilty of wilful and corrupt false swearing, and should swear falsely and corruptly, and should defraud the United States, and should fraudulently deceive and impose upon the officers of the United States charged with the administration of the laws regulating the disposal of the public lands, inasmuch and because in truth and in fact each of the said persons so to be induced to make the proofs and to answer the interrogatories aforesaid in the manner and to the



effect aforesaid should, as the said defendants intended and contemplated, before the making of such proofs and answers, have made and entered into the contracts and agreements hereinbefore stated which contracts were to be, at the time last aforesaid still continuing and subsisting, by which the title to be by him acquired should inure to the benefit of the said defendants or of some of them, and by which the said defendants or some of them should have an interest in the land and the title so to be acquired, and by reason of which contract and agreement such person seeking to make entry did not [50] do so in good faith to appropriate such land to his own exclusive use and benefit, but for the use and benefit of the said defendants or some of them.

VI. That as a further part of the said conspiracy and agreement so as aforesaid made and entered into by the said defendants, and as a further part of the unlawful means whereby the said unlawful purposes of the said conspiracy were to be effected, it was, at the times and the place aforesaid, by the said defendants, mutually agreed, designed and contemplated that they, the said defendants, after having procured the other persons hereinbefore mentioned to make applications to enter the lands hereinbefore mentioned in the manner and under the circumstances aforesaid should furnish and advance to each of the said persons so much money as should be necessary to enable such person to pay to the proper officers of the United States the amount of money prescribed by law to be paid upon the making of the entry by such person to be made, and that the sum so by the

defendants advanced should be deducted from the amount agreed to be paid by them to such person as the purchase price of the land by him entered; and it was further intended and contemplated by the said defendants that they should cause and procure each of the said other persons, who were to be induced to make entries as aforesaid, when such person should appear before the proper officers of the aforesaid land office to answer the interrogatories hereinbefore mentioned and set out, to declare on oath in answer to said interrogatories that he, the said person then applying to make entry, had paid out of his own individual funds all the expenses in connection with the filing by him made; and that he expected [51] to pay for the land by him sought to be entered with his own money; and that the money with which he intended to pay for the said land was derived by him from other sources than the defendants, and that he had had the said money in his actual possession for a longer period than in fact he had so had the same; the said defendants mutually intending, designing and contemplating that each of the said other persons, so to be caused and procured so to answer the said interrogatories should in doing so commit and be guilty of wilful and corrupt false swearing, and should swear falsely and corruptly and should defraud the United States, and should fraudulently deceive and impose upon the officers of the United States concerned with the administration of the laws regulating the disposal of the public lands, inasmuch and because in truth and in fact each of the said persons so to be caused and



procured to answer the said interrogatories in the manner and to the effect aforesaid should, as the said defendants intended and contemplated, before the making of such answers, have received from the said defendants or from some of them the money by him to be used in the purchase of the land sought by him to be entered, and should not pay or intend or expect to pay for the said land out of his own individual funds or with his own money, and should not pay or intend or expect to pay the expenses of his filing and entry out of such funds or money, and should, moreover, swear falsely and fraudulently in respect of other matters the subject of such interrogatories.

VII. That thereafter, that is to say, after the formation and making of the said unlawful conspiracy and agreement so as aforesaid made and entered into by the [52] said defendants, and at divers times in the State of Idaho, in pursuance and execution of the said conspiracy and for the purpose of effecting the said unlawful purpose thereof, the said defendants, or some of them, did make and enter into fraudulent, corrupt and unlawful contracts, agreements, arrangements and understandings with a large number of persons, severally, that is to say, with Carrie D. Maris, John H. Little, Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Bertsell H. Ferris, George Ray Robinson, Charles W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, Fred E. Justice, Edgar H. Damarell and Benjamin F. Long, severally, and with



divers other persons who are to the complainant now unknown, but whose names, when the same shall be discovered, the complainant prays leave to add to this bill by proper amendment, and to seek appropriate relief in respect of the lands by them fraudulently obtained from the complainant; that, in and by the said unlawful contracts, agreements, arrangements and understandings so as aforesaid made by the said defendants with the said other persons, each of the said other persons severally agreed and arranged with the said defendants or with some of them that he or she would make an entry and purchase a tract of the public land of the United States under and in pretended and apparent accordance with the aforesaid Act of Congress approved on June 3, 1878, as amended on August 4, 1892, and would, upon obtaining title to the said tract from the United States convey the said title and tract to the defendants or to some of them; and the said defendants, or some of them, acting for all, agreed, contracted and arranged that they would pay to each of the said other persons a certain sum of money for the tract of land by him or [53] her so to be entered and by way of recompense to such person for his or her costs, labor and trouble incurred in acquiring title to the said tract from the United States; and the said defendants further agreed and promised to furnish and advance to each of the said other persons so much money as might be necessary to enable him or her to pay for such land and to defray the other expenses incident to the obtaining of title to such land from the United States.

VIII. That thereupon, that is to say, after the making by the said defendants as aforesaid of the unlawful, corrupt and fraudulent agreements, contracts, arrangements and understandings with the said Carrie D. Maris, John H. Little, Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Bertsel H. Ferris, George Ray Robinson, Charles W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, Fred E. Justice, Edgar H. Dammarell and Benjamin F. Long, named in the last paragraph hereof, the said defendants, in pursuance and execution of the aforesaid unlawful and fraudulent conspiracy, and to effect the aforesaid unlawful purposes thereof, and in accordance with and in pursuance of the mode, scheme, method and means hereinbefore set out and stated to have been by them mutually agreed upon, designed and contemplated, and in pursuance of and in accordance with the said unlawful, corrupt and fraudulent agreement, stated in the last preceding paragraph hereof to have been made and entered into by and between the said defendants and the said Carrie D. Maris, John H. Little, Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Bertsel H. Ferris, [54] George R. Robinson, Chas. W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, Fred E. Justice, Edgar H. Dammarell, Benjamin F. Long, named in the said last paragraph, did, at divers times, unlawfully, corruptly and fraudulently cause, induce and procure the said Carrie D. Maris, John H. Lit-



tle, Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Bertsel H. Ferris, George Ray Robinson, Charles W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, Fred E. Justice, Edgar H. Dammarell and Benjamin F. Long, severally, to apply at the said land office of the United States located at Lewiston in the State of Idaho to purchase a tract of public land, then the property of the complainant, under the provisions of the aforesaid Act of Congress approved on June 3, 1878, as amended by the Act of Congress approved on August 4, 1892, and in pretended and apparent accordance with the provisions and requirements of the said Acts, the said defendants then and at all times thereafter well knowing that the said applications so made by the said other persons, and the entries so by the said other persons sought and intended to be made, were and would be false, fraudulent, illegal and invalid by reason of the fact, hereinbefore stated, that each of the said applications was made and each of the said entries was sought and intended to be made in accordance with and in pursuance of an unlawful, corrupt and fraudulent agreement, therefore as aforesaid made and then and thereafter subsisting, whereby the person so applying and seeking to enter each tract had agreed to sell to the [55] said defendants such tract upon the acquisition by him from the United States of title thereto and the said defendants had agreed to buy the said tract and the said title.

And the said defendants, in further pursuance of



the aforesaid conspiracy, and further to effect the said unlawful purposes thereof, and further in pursuance of, and in accordance with the said scheme, mode, method and means theretofore as aforesaid by them mutually agreed upon, designed and contemplated, and in further pursuance of and further in accordance with the unlawful, corrupt and fraudulent agreements theretofore as aforesaid made by them with the said Carrie B. Maris, John H. Little, Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Bertsel H. Ferris, George Ray Robinson, Charles W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, Fred E. Justice, Edgar H. Dammarell and Benjamin F. Long, hereinbefore named, did also, at divers times, cause, induce and procure the said Carrie B. Maris, John H. Little, Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Bertsel H. Ferris, George Ray Robinson, Charles W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, Fred E. Justice, Edgar H. Dammarell and Benjamin F. Long, and each of them, severally to appear before the officers of the aforesaid land office and each of them in connection with and as a part of his or her application to purchase a tract sought to be by him or her entered, to make, subscribe, make oath to and file in the said land office, a written statement of the character, substance, tenor and purport prescribed by the aforesaid statute to be filed [56] by persons desiring to avail themselves of the provisions thereof, and

did cause, induce and procure the said persons, and each of them, then and there to make and subscribe their respective written statements as aforesaid, and to state respectively in substance that he, the applicant, did not apply to purchase the land described in his said statement, on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he had not directly or indirectly made any agreement or contract or in any way or manner with any person or persons whomsoever by which the title which he might acquire from the Government of the United States might inure in whole or in part to the benefit of any person except himself; which said respective applications and each of them were then and there duly filed in the said United States Land Office.

And the said defendants, in further pursuance of the aforesaid conspiracy, and further to effect the said unlawful purposes thereof, and further in pursuance of and in accordance with the said scheme, mode, method and means theretofore as aforesaid by them mutually agreed upon, designed and contemplated, did also at divers times furnish and advance to divers and several of the said other persons hereinbefore named, and stated to have been induced and procured by the said defendants to make unlawful and fraudulent entries of public lands, divers and considerable sums of money for the purpose of enabling such other persons to purchase and pay for the lands by them respectively sought to be entered, and upon the agreement and with the understanding made and had with each of such persons



that the money so furnished was by way of advancement upon the purchase price theretofore agreed to be paid to such person by the said defendants for the land to be entered and acquired by such person and was to be applied by such person to the purchase of, and the payment for the tract [57] by him to be entered, the said defendants then and at all times hereafter, designing, intending and expecting that each of the said persons so receiving such sums of money should and would, when he or she should be questioned upon the subject by the officers of the aforesaid land office, deny and conceal from the said officers the fact that he or she had received such money from the said defendants, and should and would, in answer to the interrogatories to be propounded by the said officers, falsely and fraudulently state, on his or her oath, in writing, that he or she had obtained the said money from other persons or by other means, for the purpose and to the end that the said officers and the other officers of the United States concerned and charged with the administration of the laws governing the disposal of the public lands might and should thereby be deceived, imposed upon and fraudulently misled, and so prevented from further inquiry, investigation and consideration concerning such entries, whereby the truth and the facts hereinbefore stated might be discovered and the fraudulent character of the several transactions disclosed, and that the said officers might and should thereby be fraudulently and mistakenly caused to believe that such entries were lawful and honest and so to be induced to approve the



said entries and to cause patents to be issued thereon, conveying to the several said persons the tracts by them respectively entered.

That, thereafter, pursuant to said unlawful and corrupt conspiracy, combination, confederation and agreement, and in furtherance thereof and to carry out and effect the object and purpose thereof the said defendants did induce and procure the said other persons hereinbefore named, and each of them, to appear before the officers [58] of the said land office of the United States at Lewiston, Idaho, and to answer the certain interrogatories hereinbefore in this complaint set out, prescribed by the commissioner of the General Land Office, pursuant to the authority contained in the Act aforesaid and each of said persons then and there by the procurement of the said William F. Kettenbach, George H. Kester, William Dwyer and Clarence Robnett did answer said questions in substance and to the effect that he had not sold or transferred his claim to the land for which he made application to purchase since making his sworn statement, or had directly or indirectly made any agreement or contract in any way or manner with any person whomsoever by which the title which he might acquire from the Government of the United States might inure in whole or in part to the benefit of any person except himself and that he made his entries in good faith for the appropriation of the land exclusively to his own use and not for the use or benefit of any other person, that no other person than himself, nor any firm, corporation or association had any interest in the entry

which he was then making, or in the land or in the timber thereon, that he paid out of his own individual funds all the expenses in connection with making said filing, and that he expected to pay for the land with his own money.

IX. That at the divers and several times hereinbefore referred to, the said Carrie D. Maris and the other persons hereinbefore named and stated to have made and entered into certain unlawful, corrupt and illegal agreements, arrangements and understandings with the said defendants, severally did apply to enter, and did make entries of divers tracts of public land of the United States subject to disposal at the aforesaid land office and each of the said persons did consequently and in the usual course of [59] administration of the public laws obtain from the United States a patent whereby the United States conveyed to each of the said persons, severally, the tracts by him or her entered, that is to say, that the said Carrie D. Maris did on the 15th day of July, 1902, make her application to enter, and on the 21st day of November, 1902, did make entry of, and on the 25th day of February, 1904, did obtain a patent conveying to her, the southeast quarter of the southwest quarter of section twelve, and the east half of the northwest quarter and the northeast quarter of the southwest quarter of section thirteen, in Township thirty-six north of range five east of the Boise meridian; and the said

John H. Little did on the 20th day of March, 1903, make application to enter and did on the 15th day



of June, 1903, make entry of, and on August 3, 1904, obtained a patent conveying to him, lot one and the west half of the northeast quarter and the southeast quarter of the northeast quarter of section twenty-five, in township thirty-nine north of range three east of Boise meridian; and the said

Ellsworth M. Harrington did on the 20th day of March, 1903, make application to enter and did on June 15, 1903, make entry of, and on August 3, 1904, obtained a patent conveying to him, lot one, and the northwest quarter of the northeast quarter, and the north half of the northwest quarter of section twenty-four, in Township thirty-nine north of range three east, Boise meridian; and the said

Wren Pierce did on the 21st day of March, 1903, make application to enter and did on June 17, 1903, make entry of, and on August 3, 1904, obtained a patent conveying to him, the southeast quarter of section twenty-two, in township thirty-nine north of range three east of Boise meridian; and the said  
[60]

Benjamin F. Bashor did on the 21st day of March, 1903, make application to enter and did on June 17, 1903, make entry of, and on August 3, 1904, obtained a patent conveying to him, lot four and the southwest quarter of the southeast quarter and the south half of the southwest quarter of section twenty-four, in township thirty-nine north of range three east of Boise meridian; and the said

Joseph B. Clute did on the 24th day of March, 1903, make application to enter and did on June 17, 1903,



make entry of, and on August 3, 1904, obtained a patent conveying to him, the south half of the northeast quarter, and east half of the southeast quarter of section twenty-six, in township thirty-nine north of range three east, of Boise meridian; and the said

Francis M. Long did on March 26th, 1903, make application to enter and did on June 18, 1903, make entry of, and on August 3, 1904, obtained a patent conveying to him, the north half of the southwest quarter, and north half of the southeast quarter, of section thirteen, in township thirty-nine north, of range three east, of Boise meridian; and the said

John H. Long did on March 26, 1903, make application to enter, and did on June 18, 1903, make entry of, and on August 3, 1904, obtained a patent conveying to him, lot two and the southwest quarter of the northeast quarter, and the south half of the northwest quarter, of section twenty-four in township thirty-nine north, of range three east, Boise meridian; and the said

Benjamin F. Long did on March 26, 1903, make application to enter and did on June 18, 1903, make entry of, and on August 3, 1904, obtained a patent conveying to him, [61] the south half of the northwest quarter and the south half of the northeast quarter, of section eighteen in township thirty-nine north of range three east of Boise meridian; and the said

Benjamin F. Long did on March 26, 1903, make application to enter, and did on June 18, 1903, make entry of, and on August 3, 1904, obtained a patent conveying to him the south half of the northwest

quarter and the south half of the northeast quarter, in section thirteen, in township thirty-nine north of range three east of Boise meridian; and the said

Bertsel H. Ferris did on March 31, 1903, make application to enter, and did on June 26, 1903, make entry of, and on August 3, 1904, obtained a patent conveying to him, lot three and the northwest quarter of the southeast quarter, and the north half of the southwest quarter, of section twenty-four, in township thirty-nine north of range three east of Boise meridian; and the said

George Ray Robinson did on March 31, 1903, make application to enter and did on June 26, 1903, make entry of, and on August 3, 1904, obtained a patent conveying to him, the north half of the northwest quarter and the north half of the northeast quarter of section twenty-six, in township thirty-nine north of range three east of Boise meridian; and the said

Charles W. Taylor did on April 25, 1904, make application to enter and did on July 11, 1904, make entry of, and on December 31, 1904, obtained a patent conveying to him, lots one and two and the east half of the northwest quarter of section thirty in township thirty-eight north of range six east of Boise meridian; and the said

Jackson O'Keefe did on April 25, 1904, make application to enter and did on July 11, 1904, make entry of, and on December 31, 1904, obtained a patent conveying to [62] him, the west half of the southeast quarter and the east half of the southwest quarter of section twenty-three, in township thirty-



eight north of range five east of Boise meridian; and the said

Edgar J. Taylor did on April 25, 1904, make application to enter and did on July 11, 1904, make entry of, and on December 31, 1904, obtained a patent conveying to him, lots three and four and the east half of the southwest quarter of section eighteen, in township thirty-eight north of range six east of Boise meridian; and the said

Joseph H. Prentice did on April 25, 1904, make application to enter and did on July 11, 1904, make entry of, and on December 31, 1904, obtained a patent conveying to him, lots one and two and the east half of the northwest quarter of section eighteen, in township thirty-eight north of range six east of Boise meridian; and the said

Fred E. Justice did on April 25, 1904, make application to enter and did on July 13, 1904, make entry of, and on December 31, 1904, obtained a patent conveying to him, the east half of the northeast quarter and the east half of the southeast quarter of section twenty, in township thirty-eight north of range six east of Boise meridian; and the said

Edgar H. Dammarell did on April 25, 1904, make application to enter and did on July 25, 1904, make entry of, and on December 31, 1904, obtained a patent conveying to him, the northeast quarter of section nineteen, in township thirty-eight north of range six east of Boise meridian; and the said

Edgar H. Dammarell did on April 25, 1904, make application to enter and did on July 25, 1904, make



entry of, and on December 31, 1904, obtained a patent conveying to him, the northeast quarter of section ten, [63] in township thirty-eight north of range six east of Boise meridian.

X. That each of the said persons so making entry of and obtaining title to the tract by him or her entered did apply to make and did make such entry, and did prosecute and carry on the proceedings, at the solicitation and instigation of the said defendants, being moved and stimulated thereto by, the advice, request and promises of the said defendants, and therein acting upon, in pursuance of, and in accordance with the unlawful, corrupt and fraudulent agreement, arrangement and understanding theretofore made and entered into as aforesaid between him or her and the said defendants, which said agreement, arrangement and understanding continued and subsisted throughout the whole of the said proceedings, whereby it had been and was agreed that the said defendants should buy from each of the said persons, and each of the said persons should sell and convey to the said defendants, the tract and the title by him or her to be acquired from the United States.

XI. And the complainant further avers that each of the persons named in the last preceding paragraph hereof and stated to have made entries, severally, of certain tracts of public land, in connection with his or her application to make entry of such land, and as a part of the said application, and as a necessary and material step in the proceedings to obtain a patent for the land by him or her sought

to be entered, did file in the said land office a written statement, of the [64] character, substance, tenor and purport prescribed by the act of Congress aforesaid, wherein such person did, on his or her oath, falsely, fraudulently and deceitfully swear in substance that he or she was not applying to purchase the tract of land by him or her sought to be entered on speculation, but in good faith to appropriate the same to his or her own exclusive use and benefit, and that he or she had not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he or she should acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself or herself, whereas in truth and in fact each of the said persons was applying to enter the tract by him or her sought to be entered upon speculation, and not for his or her own exclusive use and benefit, and had made an unlawful and fraudulent agreement with the said defendants, as aforesaid, whereby the title by him or her to be acquired should inure to the use and benefit of the said defendants; and the said statements so made by the said persons and each of them were known by the said persons and by each of them, and were known by the said defendants, to be false, untrue, fraudulent and deceitful.

XII. And the complainant further avers that each of the said persons hereinbefore named and stated to have made the entries hereinbefore mentioned and designated, did, in the course of the said



proceedings had and prosecuted by them as aforesaid, appear before the officers of the aforesaid land office and did, on his or her oath [65] and in writing, make answers to the several interrogatories which had been as aforesaid prescribed by the Commissioner of the General Land Office to be propounded to persons seeking to make entries under the aforesaid act of Congress, which said interrogatories are hereinbefore set out, and which were propounded to each of the said persons; and in so making answer to the said interrogatories, each of the said persons did, upon his or her oath in writing, falsely, fraudulently and deceitfully declare and swear that he or she had not, directly or indirectly, made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which he or she might acquire from the Government of the United States should inure, in whole or in part to the benefit of any person except himself or herself, and that he or she so making the entry by him or her offered to be made in good faith for the appropriation of the land sought to be entered exclusively to his or her own use and not for the use or benefit of any other person, and that no other person than the said person so offering to enter, and no firm, corporation or association, had any interest in the said entry or in the land sought to be entered or in the timber standing upon the said land; whereas in truth and in fact each of the said persons had, as aforesaid, theretofore made and entered into the agreement hereinbefore stated with the said defendants, which agreement was then still



continuing and subsisting, whereby each of the said persons so seeking to make entry had agreed to sell the land by him to be entered to the said defendants or some of them, and the title to be acquired by each of said persons was to inure to the benefit of the [66] said defendants; and the said answers so made by the said persons to the said interrogatories were by the said persons and by the defendants known to be false and fraudulent.

XIII. And the complainant further avers that several of the said persons named in the ninth paragraph hereof and therein stated severally to have made entries of divers tracts of public land, did, before the time they appeared at the aforesaid land office to make the proof required by the statute aforesaid and to answer the interrogatories hereinbefore mentioned as required to be answered by them, receive and accept from the said defendants or some of them, certain sums of money, which sums were furnished and advanced to the said persons by the said defendants or some of them, in pursuance of and in accordance with the unlawful and fraudulent agreements and arrangements hereinbefore stated and alleged to have been made between the said defendants and the said other persons, whereby the said defendants were to advance to the said other persons such money as should be necessary to enable such other persons to pay for and purchase the several tracts by such other persons respectively to be entered and purchased; and the said sums of money were by the said defendants furnished, and by the said other persons received and accepted, for

the purpose of enabling the said other persons to make entries of, and to pay for, the several tracts of public land intended to be entered by such other persons, and upon a mutual agreement and understanding in each case that such money was to be so used and applied by the recipient thereof; and [67] the said persons so receiving the said sums of money did use the same for the purpose aforesaid, and each of the said persons did, in making his or her entry, pay to the officers of the said land office the purchase price required by law to be paid for the land entered and purchased by such person, and did pay the other expenses by him or her incurred in the said proceeding, with the said money obtained and derived from the said defendants, or some of them, and not with money belonging to the person making the entry or derived and obtained from other persons than the defendants. Nevertheless, each of the said persons, who had as aforesaid received the said sums of money from the said defendants, when he or she appeared at the said land office to make such proofs and to answer such interrogatories as have hereinbefore been mentioned and stated, did, in answer to those of the said interrogatories relating to the subject, on his or her oath, in writing, falsely, fraudulently and deceitfully swear and declare, in substance, that he or she intended to pay and was about to pay the purchase price required by law as aforesaid out of funds and with money belonging to him or her, and being his or her individual property, and did untruly, falsely and deceitfully state and represent that he or she had obtained such



money from other persons and other sources than the said defendants.

Wherefore, and by reason of the said false, fraudulent and deceitful representations so made by the said persons seeking to make entries of the said lands, the officers of the United States concerned in the proceedings [68] were deceived and imposed upon, and were caused to believe that the entries so offered to be made were honest and valid entries; whereas, had the said officers been by the said other persons truly informed and appraised of the fact that the several sums of money so paid for the purchase of the said lands were the property of the defendants in this cause and had been advanced as aforesaid by the said defendants, the said officers would have been caused to make, and it would have been their duty to make, further inquiry and investigation concerning the said proposed entries and the transactions connected therewith, and to give further consideration to the said entries and transactions, with the result that the facts hereinbefore stated would have been discovered, the fraudulent character of the several transactions hereinbefore set forth would have been discovered, and the making of the illegal, invalid and fraudulent entries sought by the said defendants and the said other persons to be made would have been prevented.

XIV. And the complainant further avers that, by reason of the facts hereinbefore stated, and by reason of the unlawful conspiracy among the said defendants, the unlawful agreements between the said defendants and the said other persons who made



the entries herein enumerated and designated, the perjury procured by the said defendants and committed by the said other persons in the procurement of the said entries, and the false swearing, misrepresentations and concealment of material facts committed and practiced by the said persons, and of the other matters which are hereinbefore set out, the said entries, and each of them were unlawfully made, and were and are illegal, fraudulent and invalid, and that the United States was and is defrauded thereby; and that, by [69] reason of the said facts, the officers of the United States, charged with the administration of the laws providing for and governing the disposal of the public lands, and concerned in the transactions herein stated, were deceived, defrauded, misled and imposed upon, and caused to allow the said entries to be made, and induced to approve the said entries and to issue patents thereon; and that the said patents, by reason of the said facts, are invalid, and are voidable at the suit of the United States, as having been procured by fraud, perjury, misrepresentation and imposition and in violation of law, and as having been issued and granted under fraudulent imposition and mistake of fact, and in fraud of the United States.

XV. And complainant further avers and charges that the said defendants, William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach, by their aforesaid several unlawful, corrupt and fraudulent schemes and practices, and by and through the various persons heretofore, in this bill of complaint,

mentioned as employed by them for that purpose, fraudulently obtained and procured the patents of complainant to be issued to the various persons hereinbefore in this bill of complaint mentioned in connection with the several descriptions of said lands mentioned and set out. And your complainant further avers and charges that the said pretended patents to the lands heretofore described were procured, as the defendants William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach and each of them, well knew at the time of procuring the same, in violation of the laws of the United States. And your complainant further avers and charges that in the case of each and every of such tracts [70] of land in this bill of complaint described, the acts and conduct of the said defendants, William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach, and each of them, and each and every of their employees and confederates, were illegal and fraudulent, and that the patents procured from this complainant by and on behalf of said defendants, were and are, in each and every instance, fraudulent, invalid and voidable as against this complainant, and contrary to equity and good conscience, and being so, and the titles purporting to be conveyed thereby being vested in certain of the said defendants, the said patents ought to be vacated, set aside, avoided and for naught held.

XVI. And the complainant avers and charges that the patents so unlawfully and fraudulently



procured from complainant by and on behalf of the said defendants, William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach, for the several tracts of land in this bill of complaint mentioned and described were issued by this complainant in each and every instance, within six years of the filing of this bill of complaint.

XVII. Complainant further avers and charges that pursuant to the said unlawful and corrupt combination, conspiracy and agreement, hereinbefore alleged and set forth, and to effect the object and purpose thereof, the said William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach did induce the said several other persons hereinbefore named in connection with the description of the said several tracts of land to convey the same, in some instances to George H. Kester, in some instances to William F. Kettenbach by the name of W. F. Kettenbach, in some instances [71] to George H. Kester and William F. Kettenbach, or George H. Kester and W. F. Kettenbach, or Kester and Kettenbach, in some instances to Clarence W. Robnett by the name of C. W. Robnett; but complainant avers that in each and every instance such conveyances were executed for the benefit of the said defendants, William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach, or either or all of them, and other person or persons unknown to complainant, pursuant to the unlawful agreement hereinbefore alleged and set



forth; and that, by means of such conveyances from the said several other persons to whom the patents of the United States were issued, the several titles purporting to be issued by the United States and conveyed to the said patentees are now vested in certain of the said defendants.

Forasmuch, therefore, as the complainant has been so as above cheated and defrauded of its public lands and is remediless at and by the strict rules of the common law, and is only relievable in a court of equity wherein such matters are fully cognizable and reviewable; and to the end that the said William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. Kettenbach may full, true, direct and certain answers make, according to the best of their knowledge, information and belief, to all and singular the matters and charges aforesaid, but not on oath, their answer on oath being hereby expressly waived, your complainant prays as follows:

That the said William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett and Frank W. [72] Kettenbach and the several persons hereinbefore named in connection with the description of said lands, may be held, adjudged and decreed to have defrauded the complainant of the lands and each and every description thereof hereinbefore set forth as patented by complainant to the several persons hereinbefore named, and that by reason of such fraud, the patents issued to them, or either of them, or to others in their behalf, be declared void, as such, be held for naught and set

aside, and the said lands restored to the public domain of the complainant; and the said defendants, and each of them, be held to pay to the treasurer of complainant, all such reasonable sums of money as it may have found necessary to lay out and expend in and about discovering and establishing the fraud as is hereinbefore set forth and charged, that this complainant may have all such further relief in the premises as may be conformable to equity and good conscience, and such as seems proper to this honorable court.

(Signed) GEO. W. WICKERSHAM,

Attorney General of the United States,

Solicitor for Complainant.

[Endorsed]: Filed May 22d, 1909. A. L. Richardson, Clerk. [73]

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*In the Circuit Court of the United States for the District of Idaho, Northern Division.*

UNITED STATES OF AMERICA,

Complainant,

vs.

WM. F. KETTENBACH, GEO. H. KESTER,  
WILLIAM DWYER, CLARENCE ROBBETT and FRANK W. KETTENBACH,

Defendants.

**Notice of Motion [to Strike Portions from Amended Bill].**

To the Complainant Above Named, and to C. H. Lingenfelter, United States District Attorney, for the District of Idaho, and by Virtue Thereof,

Solicitor for Complainant; and to Geo. W. Wickersham, Attorney General for the United States, and by Virtue Thereof Solicitor for Complainant, and to each of you:

TAKE NOTICE: That at the courtroom in Moscow, Latah County, Idaho, in the said District of Idaho, on the first day of the convening of said Court at the next regular term thereof at the hour of ten o'clock of said day, or as soon thereafter as Counsel can be heard, the defendants will move the above-entitled court to strike from the amended bill in equity the portions thereof set out specified in the annexed Motion upon the ground and for the reasons therein stated.

(Signed) GEO. W. TANNAHILL,  
Solicitor for Defendants, Wm. F. Kettenbach, Geo.  
H. Kester, William Dwyer, Clarence Robnett,  
Residing at Lewiston, Idaho.

Due service of the above and foregoing notice of motion accepted by receipt of copy admitted at Lewiston, Idaho, this 21 day of June, A. D. 1909.

(Signed) C. H. LINGENFELTER,  
U. S. District Attorney for the District of Idaho.



*In the Circuit Court of the United States for the District of Idaho, Northern Division.*

UNITED STATES OF AMERICA,

Complainant,

vs.

WM. F. KETTENBACH, GEO. H. KESTER,  
WILLIAM DWYER, CLARENCE ROBBETT and FRANK W. KETTENBACH,

Defendants.

**Motion to Strike [Portions from Amended Bill].**

Comes now the defendants herein, Wm. F. Kettenbach, Geo. H. Kester, William Dwyer and Clarence Robnett and files this their motion to strike out of and from the plaintiff's amended bill in equity the following portions:

1.

All of paragraph one thereof, especially that portion of paragraph one as follows: Beginning with the word "that," the first word in line 5 from the beginning of paragraph one, and ending with the word "acre," being the last word in the first line from the top of page 2; upon the ground that the same is irrelevant, redundant, surplusage and immaterial, and a matter if material for any purpose of which the Court takes judicial knowledge and notice.

2.

All of that portion of paragraph one, beginning with the word "said," the same being the first word

in line 3 from the bottom of page 2, and ending with the word “office,” the same being the last word on page two, upon the ground that the same is redundant, surplusage, irrelevant and immaterial. [75]

3.

All of paragraph 2, upon the same ground and for the same reason.

4.

All of paragraph 3 thereof, upon the same ground and for the same reason.

5.

All of paragraph 4 thereof, upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

6.

All of paragraph 5, and all of paragraph 6 thereof, upon the same ground and for the same reason.

7.

All of that portion of paragraph 7, beginning with the word “and,” the same being the second word in line 14 from the beginning of paragraph 7 and ending with the word “complainant,” the same being the 4th word in line 18 from the beginning of said paragraph 7, upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

8.

All of that portion of paragraph 7, beginning with the word “that,” the same being the 5th word in line 18 from the beginning of said paragraph 7, and ending with the word “United States,” the same being the last word of paragraph 7, upon the ground that the same is redundant, surplusage, irrelevant,

immaterial and indefinite and uncertain, and does not specify whether said alleged contract or agreement was made prior to the filing of the sworn statement, or subsequent thereto, and prior to the making of final proof. [76]

## 9.

All of paragraph 8 thereof, upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

## 10.

All of paragraph 12 thereof, upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

## 11.

All of paragraph 13 thereof, upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

## 12.

All of paragraph 14 thereof, upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

## 13.

All of paragraph 15 thereof, upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

## 14.

All of paragraph 17 thereof, upon the ground that the same is redundant, surplusage, irrelevant and immaterial.

Upon the argument of said motion, there will be used the amended bill in equity heretofore filed herein; the defendants' original Notice of Motion



heretofore served and filed herein, and all of the files and records in the cause. [77]

(Signed) GEO. W. TANNAHILL,  
Solicitor for Defendants, Wm. F. Kettenbach, Geo.  
H. Kester, William Dwyer, Clarence Robnett,  
Residing at Lewiston, Idaho.

State of Idaho,  
County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, upon oath says that he is the solicitor for the defendants in the foregoing motion, and that said motion is made in good faith, and not for the purpose of delay, and is as affiant verily believes, well founded in point of law.

(Signed) GEO. W. TANNAHILL.

Subscribed and sworn to before me this 21st day of June, A. D. 1909.

[Seal] (Signed) SAMUEL O. TANNAHILL,  
Notary Public in and for Nez Perce County, Idaho.

[Endorsed]: Filed June 23, 1909. A. L. Richardson, Clerk. [78]

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*In the Circuit Court of the United States for the  
District of Idaho, Northern Division.*

UNITED STATES OF AMERICA,

Complainant,

vs.

WM. F. KETTENBACH, GEO. H. KESTER,  
WILLIAM DWYER, CLARENCE ROB-  
NETT and FRANK W. KETTENBACH,  
Defendants.

**Demurrer to Amended Bill in Equity.**

To the Honorable Judges of the Circuit Court of the United States for the District of Idaho:

Comes now the defendants, Wm. F. Kettenbach, William Dwyer, Clarence Robnett, Geo. H. Kester and demurs to the amended bill in equity of the complainant on file herein, and for cause of demurrer alleges:

1.

That said amended bill does not state facts sufficient to constitute a cause of action against these demurring defendants, or either thereof.

2.

That there is a misjoinder of parties defendant in said amended bill and such misjoinder consists in this, that said Wm. F. Kettenbach, Geo. H. Kester and William Dwyer are improperly joined in a bill with the defendants Clarence W. Robnett and Frank W. Kettenbach; no concert of action appearing from the amended bill and no allegations wherein the said parties can be [79] made jointly liable for any act or violation of law, and it does not appear from said amended bill that the said defendants were to share jointly or at all in the proceeds of said land, or the money received therefrom, or contributed jointly for the procuring of said parcels or tracts of land, or either thereof; and it does not appear from said amended bill that the said defendants are jointly liable for any act or violation of the law, or the rules of equity in any way or manner whatsoever.

## 3.

That said amended bill does not state facts sufficient to confer jurisdiction upon the above-entitled court to hear and determine the matters attempted to be raised and pleaded therein, and the said amended bill does not state facts sufficient to show that the above-entitled court has jurisdiction over any of the subject matter contained or pleaded therein, or jurisdiction to hear and determine the same.

## 4.

That said amended bill is indefinite, unintelligible, ambiguous and uncertain, and that such uncertainty consists in this, to wit, that it does not appear therefrom in what way or manner the said defendants acted, or what overt acts were committed by either of said defendants in procuring title to said tracts of land, or any part thereof, or the manner in which the said land was acquired.

## 5.

That the said amended bill in equity is further indefinite, unintelligible, ambiguous and uncertain, and such uncertainty consists in this, to wit, that it does not appear therefrom whether or not the said alleged [80] agreements or either or any thereof were made prior to the filing of the sworn statement of the various entrymen, or subsequent to the filing of the sworn statement, and prior to the making of final proof; and it does not appear therefrom that the said tracts of land, or either thereof, at the date of the filing of the original bill in equity herein stood



of record in the names of the said defendants, or either thereof.

## 6.

That the said amended bill, as a whole, does not state facts sufficient to constitute a cause of action against these demurring defendants, or either thereof.

WHEREFORE, Wm. F. Kettenbach, Geo. H. Kester, William Dwyer and Clarence Robnett demand judgment on their demurrer.

(Signed) GEO. W. TANNAHILL,  
Solicitor for Defendants, Wm. F. Kettenbach, Geo. H. Kester, William Dwyer, and Clarence Robnett, Residing at Lewiston, Idaho.

State of Idaho,  
County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, upon oath says that he is the solicitor for the demurring defendants above named, and that said demurrer is made in good faith, and not for the purpose of delay, and is as affiant verily believes well founded in point of law.

(Signed) GEO. W. TANNAHILL. [81]

Subscribed and sworn to before me this 21 day of June, A. D. 1909.

[Seal] (Signed) SAMUEL O. TANNAHILL,  
Notary Public in and for Nez Perce County.

Rec'd copy June 21, 1909.

C. H. LINGENFELTER,  
U. S. Dist. Atty.

[Endorsed]: No. 388. Filed June 23, 1909. A. L. Richardson, Clerk. [82]

*In the Circuit Court of the United States for the  
District of Idaho, Northern Division.*

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Praecipe to Set Down Demurrer to Amended  
Complaint for Hearing.**

The clerk of the Court will please note the demurrer filed by the defendants to the amended bill of complaint in the above-entitled cause as set down for argument by the complainant on the first day of the next regular term of the court to be held at Moscow, in Idaho, upon the coming in of the court on the said day or as soon thereafter as counsel can be heard.

PEYTON GORDON,

CHARLES A. KEIGWIN,

Solicitors for Complainant.

In accordance with the foregoing praecipe the demurrer to the Amended Complaint in the above-entitled cause is hereby set down for argument upon the first day of the next regular term, being the October, 1909, term, at Moscow, Idaho, or as soon thereafter as counsel can be heard.

Dated August 17, 1909.

A. L. RICHARDSON,

Clerk. [83]

*In the Circuit Court of the United States for the  
District of Idaho, Northern Division.*

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,  
Complainant,

vs.

WILLIAM F. KETTENBACH et al.,  
Defendants.

The clerk of the Court will please note the demurrer filed by the defendants to the amended bill of complaint in the above-entitled cause as set down for argument by the complainant on the first day of the next regular term of the court to be held at Moscow, in Idaho, upon the coming in of the court on the said day or as soon thereafter as counsel can be heard.

PEYTON GORDON,  
CHARLES A. KEIGWIN,  
Solicitors for Complainant.

[Endorsed]: Filed August 17, 1909. A. L. Richardson, Clerk. [84]



*In the Circuit Court of the United States for the  
Ninth Judicial Circuit, District of Idaho, North-  
ern Division.*

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,  
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KES-  
TER, WILLIAM DWYER, CLARENCE W.  
ROBNETT, FRANK W. KETTENBACH,  
Defendants.

**Answer and Disclaimer of Frank W. Kettenbach [to  
Amended Bill].**

THE ANSWER AND DISCLAIMER OF FRANK  
W. KETTENBACH, DEFENDANT, TO THE  
AMENDED BILL OF COMPLAINT OF THE  
UNITED STATES OF AMERICA, COM-  
PLAINANT.

This defendant, Frank W. Kettenbach, reserving to himself all right of objection to the said amended bill of complaint, for answer thereto says:

That this defendant denies wholly and in each and every detail and particular each and every allegation in the said bill of complaint contained, as to acts and things done by this defendant, including all the allegations of combination, conspiracy, confederation and agreement, and avers that the same and each and every of the said allegations in the said bill of complaint are wholly, and in each and every detail, untrue.

As to all other allegations in said bill of complaint contained, this defendant is a stranger.

This defendant has never had any right, title, claim or interest in any of the real property, or any of the entries thereof or claims thereto, described in the [85] said bill of complaint, and hereby disclaims any right, title, claim and interest therein whatsoever.

Therefore, this defendant leaves the complainant to make such proof of the said bill of complaint as it shall be able to produce.

This defendant, further answering, denies that the complainant is entitled to relief, or any part thereof, in the said bill of complaint demanded, and prays the same advantage of this answer as if he had pleaded or demurred to the said bill of complaint, and humbly prays to be dismissed with his reasonable costs and charges in this behalf sustained.

(Signed) FRANK W. KETTENBACH,

(Signed) JAMES E. BABB,

Solicitor and of Counsel for Defendant, Frank W.

Kettenbach, Residence and Postoffice Address:  
Lewiston, Idaho.

State of Idaho,

County of Nez Perce,—ss.

I, Frank W. Kettenbach, being first duly sworn, on oath depose and say: That I am one of the defendants in the above-entitled cause; that I have read the foregoing answer and disclaimer, signed by me, and know the contents thereof, and that the same is true of my own knowledge.

(Signed) FRANK W. KETTENBACH.

Subscribed and sworn to before me this 1st day of October, 1909.

(Signed) JOHN R. BECKER,  
Notary Public in and for Nez Perce County, State of Idaho.

[Endorsed]: Filed October 2, 1909. A. L. Richardson, Clerk. [86]

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*In the Circuit Court of the United States for the District of Idaho, Northern Division.*

No. 388.

THE UNITED STATES OF AMERICA,  
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,  
WILLIAM DWYER, CLARENCE ROBNETT, FRANK W. KETTENBACH,  
Defendants.

**Replication to Answer and Disclaimer.**

Replication of complainant in the above-entitled cause to the answer and disclaimer of Frank W. Kettenbach, defendant:

This repliant, saving and reserving all advantage of exception to the manifold insufficiencies of said answer and disclaimer, for replication thereto saith that it will ever aver, maintain and prove its said bill to be true and sufficient in law, and that said answer and disclaimer is untrue and insufficient; whereupon repliant prays relief as in said bill of



complaint set forth.

PEYTON GORDON,  
GEO. V. TRIPLETT, Jr.,  
Special Assistants to the Attorney General,  
Solicitors for Complainant.

[Endorsed]: Filed Nov. 1, 1909. A. L. Richardson, Clerk. [87]

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*In the Circuit Court of the United States, Ninth Circuit,  
District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,  
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,  
WILLIAM DWYER, CLARENCE W.  
ROBNETT, FRANK W. KETTENBACH,  
Defendants.

**Opinion on Exceptions for Impertinency.**

PEYTON GORDON, Esq., and GEO. V. TRIPLETT, Jr., Esq., Special Assistants to the Attorney General, Solicitors for Complainant.  
GEORGE W. TANNAHILL, Esq., Solicitor for Defendants.

DIETRICH, District Judge:

This suit was commenced by the United States to cancel several patents to lands the title of which was acquired under the provisions of the Timber and Stone Act. The theory of the complainant is that the defendants entered into a conspiracy for the wrongful acquisition of these lands, the scheme being to induce various qualified persons to make

entries, ostensibly for themselves, but in reality upon behalf of the defendants and for their use. It is charged that in their initiatory applications the entrymen falsely represented that they applied to enter the lands in [88] good faith, etc., as provided by law, and that also, at the final proof, they further represented that they had not, since filing their applications, entered into any agreement for the alienation of the lands, or any interest therein. No discovery is sought, and answer under oath is waived. The original bill was filed before the decision in the Williamson case (207 U. S. 425), prior to which the Interior Department maintained and enforced the view that an entryman, proceeding under the Timber and Stone Act, could not lawfully make any agreement for the alienation of an interest in the land, or the timber growing thereon, until after final proof. In sustaining the demurrer to the bill, which was submitted after the Williamson case had been decided, it was suggested by the court that possibly the complainant would deem it desirable to re-form the bill to bring it into harmony with the rule of that case, it being assumed, without argument, that in re-drafting the bill certain portions thereof would probably be eliminated. A different view, however, was taken by the government, and the allegations relating to the final proofs, amplified and supplemented, have been retained in the amended bill, to which the defendants have interposed what they designate as a motion to strike out certain portions thereof, on the ground, as stated in the motion, that the specified paragraphs are "irrelevant, redundant, surplusage



and immaterial.” Such a motion would be a proper pleading under the Idaho code if the suit were pending in the State courts, and doubtless counsel for the defendant inadvertently fell into the error of assuming that a like practice prevails upon the equity side of this court. Attention having, at the argument, been called to the impropriety of such a [89] motion here, defendants have now asked leave to file exceptions for impertinency, to take the place of the motion, the exceptions tendered being directed to substantially the same matters covered by the motion. While the original paper is called a motion, instead of exceptions, and while it describes the objectionable matter as being “irrelevant, redundant and immaterial,” instead of describing it as being “impertinent,” the courts are concerned with the substance, and not the form, and I therefore think that, without impropriety, the paper may be considered as presenting exceptions for impertinency; and such is the view that I shall take of it. To charge that matter is irrelevant and redundant is substantially to charge that it is impertinent, and a mere misnomer of a pleading is ordinarily held to be immaterial and nonprejudicial. *Bassett vs. Twin City Power Company*, 111 Fed. 45. However, the defendants are permitted to file the paper now presented and designated “Exceptions to the Amended Bill.”

Many of the exceptions are directed to those paragraphs of the bill which set forth the rules and regulations of the Department of the Interior prescribing certain interrogatories to be propounded to applicants for timber land at the final proof, and the



scope of the alleged conspiracy, so far as it relates to such proofs, and other acts of the entrymen pertaining thereto, it being the contention of the defendants that, under the rule of the *Williamson* case, these final proofs were exacted without warrant of law, and that, therefore, the averments pertaining thereto are impertinent. The complainant, denying to the *Williamson* decision an [90] effect so sweeping, contends that the final proof may properly be pleaded and exhibited in evidence. Its theory seems, in part, to be disclosed in the bill itself, where it is alleged that the defendants induced the entrymen falsely to answer these final proof questions, and the entrymen made false answers "for the purpose and to the end that the said officers and the other officers of the United States concerned and charged with the administration of the laws governing the disposal of the public lands might, and should, thereby be deceived, imposed upon, and fraudulently misled, and so prevented from further inquiry, investigation and consideration concerning such entries."

If we assume the correctness of this conclusion, and it is difficult to anticipate how it could be proved or disproved, upon what theory can final proof be material? A full investigation and disclosure of the facts in the case must discover the existence of one of three possible conditions: First, that the entryman, from the beginning, acted in good faith, and never alienated, or agreed to alienate, any interest in the land,—in which contingency obviously the government could not now recover; or, second, that

while at the time the applicant made his initial declaration no other person had any interest, direct or indirect, in the entry, subsequently, and prior to final proof, an agreement of sale was entered into,—in which case, under the rule of the *Williamson* decision, as also of the *Biggs* case (211 U. S. 507), he would have been guilty of no wrong, and would be entitled to patent. For if, in order to [91] induce the land officers to grant to him that which, under the law, he was undoubtedly entitled to receive, he concealed from them immaterial facts, reprehensible though his conduct might be from a moral viewpoint, there would be no actionable wrong; while its officers might thus have been deceived, the Government was not defrauded.

The other possible contingency is that the entryman, from the beginning, acted in bad faith, his original sworn declaration being false; and such is the case exhibited by the bill. But if the original declaration was false in material respects, and the officers of the Government charged with the disposal of public lands were thereby induced to accept the application, and thereafter to issue the patent, how could it now be material whether or not these officers were, at a later date, by other false representations on the part of the entryman, deterred from making inquiry into the truthfulness of the original declaration? No law imposed upon them the duty to make such investigation, and the fact that the officers were twice deceived, if deceived at all, does not enlarge the complainant's rights or strengthen its case. If there was no actionable fraud in the orig-



inal declaration, there was none at all. If the original declaration was fraudulent, there being no obligation upon the part of the government to discover the fraud, it is now immaterial whether or not its officers were, by the conduct of the entrymen, thereafter diverted from an investigation which they might otherwise have voluntarily made. If the failure upon the part of the officers of the Government to detect the fraud in the original declaration, prior to the issuance of patent, [92] concluded all inquiry into the bona fides of the entry, the complainant's contention would not be devoid of merit, for it would become material to show that by the deceit of the entrymen the officers were prevented from performing their duty and making the discovery; but it is not contended that such is the rule; no legitimate avenue of inquiry which was then open to the officers of the land department is now closed to this judicial inquiry. It must be borne in mind that the plaintiff, in urging this point, does not pretend that the false statements made by the entrymen at the final proof, independently and of themselves, confer upon the plaintiff a right of action. Such contention was made and rejected in the *Biggs* case. While that was a criminal case, the charge there, as here, was of a conspiracy to defraud the Government out of timber lands by substantially the same scheme as is here alleged to have been devised and used by the defendants. Mr. Justice White, delivering the opinion of the Court, said:

“It is insisted by the Government that, however conclusive may be this ruling as to the



power of the applicant to sell after application and to perfect his entry for the purpose of enabling him to perform such contract, such ruling does not conclude the contention that a conspiracy formed to induce an entryman who has made his application to purchase subsequently to agree to convey his interest in the land would be a violation of the statute. But we are constrained to say that this is a mere distinction without a difference. The effect of the ruling in the *Williamson case* was to hold that the prohibition of the statute only applied to the period of original application, and ceased to restrain the power of the entryman to sell to another and perfect his entry for the purpose of transferring the title after patent. This being concluded by the decision in the *Williamson case*, the distinction now sought to be made comes to this, that it is unlawful under the statute to conspire to have that done which the statute did not prohibit, and, on the contrary, by implication recognized could be lawfully done without prejudice or injury to the United States in any manner whatever. This also serves to demonstrate that no error was committed by the court below in holding that under 5440, Rev. Stat., the acts charged in the indictment [93] could not possibly have constituted a defrauding of the United States in any manner or for any purpose within the intendment of that section."

The primary fraud lies in the false application, and the actionable wrongdoing of the claimant con-

sists of that which he did prior to and at the time of making his application, and not what he did thereafter. If we were to assume falsity in the answers referred to by the complainant as having been made at the time of final proof, nevertheless failure to prove falsity in the primary application would be fatal to the complainant's right to recover. Upon the other hand, if we assume the falsity of the primary application, falsity in the final proof is not necessary, and hence becomes immaterial to the plaintiff's right of recovery. In either alternative, the controlling issue is ruled solely by the character of the primary application.

It remains to consider whether or not the final proofs are of evidentiary potency as tending to prove that the entries were illegal in their inception. Aside from the question of the propriety of pleading matters which thus, by hypothesis, are only of probative value, upon what theory, or by reference to what principle of evidence, may they be regarded as proofs of the original fraud? For example, in his declaration, the entryman, upon oath, states that he makes the application "in good faith to appropriate the land to his own exclusive use and benefit, etc." One of the interrogatories propounded upon final proof was: "Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use and benefit [94] of another person?" By each entryman in this case, according to the allegations of the bill, this question was answered in the affirmative. If the question and answer be construed as relating back to the time



of the inception of the entry, the answer thereto is not only consistent with, but is a mere repetition of, the initiatory sworn statement. How, then, can it be regarded as proof of the falsity of such original declaration without indulging the unreasonable assumption that the consistent repetition of a statement under oath is proof of its falsity?

If it be suggested that by extrinsic evidence it can be and will be shown that the answer to the interrogatory was untrue, the reply is that, under the rule of the *Williamson case*, it would be immaterial to show the falsity of the answer so far as the question relates exclusively to the period following the filing of the original application; and as to the preceding period, it is obvious that any evidence tending to impeach the answer so far as it relates to that period would, with equal force and directness, tend to disclose the falsity of the like statement contained in the declaration, and such evidence would therefore be admissible in support of the charge of primary fraud in making a false application, without the circuitous device of pleading and exhibiting in evidence the final proof. From this statement I am not to be understood as holding that such evidence would necessarily tend to prove fraud in the original declaration, but only that, *if* it has a tendency to discredit an answer at the final proof, directed to conditions existing at and prior to the time of the primary application, the relevancy of such evidence in no wise depends upon the existence or the character of the [95] final proof.

Finally, it is argued that deception in the final



proof may be established as tending to show fraudulent motive in the original application. The argument here consists of little more than a mere statement of the proposition; no precedent is cited, nor is there any very clear reference to general principles. The difficulty seems to lie in the apparent reluctance of counsel for the government fully to accredit the *Williamson* decision, and to recognize the fact that prior to its rendition the officers charged with the disposal of public lands were improperly, though without wrongful intent, refusing to issue patents for timber lands to entrymen who, however perfect their good faith prior to and at the time of their primary application, subsequently and before final proof, agreed to alienate their title when it should be procured. Knowing of this rule of the Interior Department, and of its strict enforcement, the entryman who was guilty of no wrong up to the time of his application, and who made an honest and truthful declaration, but who thereafter, and prior to final proof, contracted to sell, was, if he would procure patent, compelled to answer the questions at final proof precisely as it is alleged they were answered by the entrymen here. If, therefore, two men, one of whom made his application in good faith, and one of whom made his application in bad faith, were, in order to secure patent, compelled both to answer the questions put to them at final proof, in the same way, how can such answers be regarded as proof of fraudulent intent in the original applications? But as I view it, the point is foreclosed by the *Williamson* decision, adversely to the Govern-

ment, and therefore [96] any extended consideration would be gratuitous. Upon mature reflection, I am unable to yield to the suggestion that, in so far as this point is involved, the *Williamson* decision is *obiter*, nor am I able to perceive a material distinction in principle between that case and this. It is true that the point was not vital to the conclusion reached by which the judgment of the lower court was reversed; but it was fairly presented upon the record, was material, and was deliberately decided as involving a question which might arise upon a future trial. Mr. Justice White, who delivered the opinion of the court, after clearly defining the limited scope and function of the final proof as prescribed by the Timber and Stone Act, states his conclusion in the following language:

“As then there was no requirement concerning the making in the final proof of an affidavit as to the particulars referred to, and as the entryman who had complied with the preliminary requirements was under no obligation to make such an affidavit and had full power to dispose *ad interim* of his claim upon the final issue of patent, we think the motive of the applicant at the time of the final proof was irrelevant, even under the broad rule which we have previously in this case applied, and therefore that error was committed not alone in instructing the jury that the indictment covered or could cover the procurement of perjury in connection with the final proof, and that the jury might base a conviction thereon, but in admitting the final proof



as evidence tending to show the alleged illegal purpose in the primary application for the purchase of the lands.” 207 U. S. 462.

We have here a clear declaration that the motive of the entryman at the time of final proof is irrelevant, and that the final proof is not admissible “*as evidence tending to show the alleged illegal purpose in the primary application.*” In reaching this conclusion, the court was not unmindful or unappreciative of the rule allowing great latitude in the reception of circumstantial evidence to establish unlawful motive or intent, in [97] charges involving offenses incapable of direct proof. Earlier in the opinion this rule is liberally stated and expressly approved, but, it is said in the extract already quoted, “*we think the motive of the applicant at the time of final proof was irrelevant, even under the broad rule which we have previously in this case applied.*”

The fact that in the *Williamson case* the charge was of a conspiracy to suborn perjury, whereas here it is of a conspiracy to defraud, presents a distinction more apparent than real. Both cases involve violations of the Timber and Stone Act; the purpose, method and means employed in both are identical; the form and appellation of the charges may be different, but the facts constituting them are the same. Bearing in mind the circumstances of each case, proofs of one charge are proofs of the other, for the specific charge of perjury necessarily implies fraud, and the specific charge of fraud necessarily implies perjury. Of course I am not to be understood as



holding that the proofs are necessarily identical or coterminous. Evidence sufficient to disclose a case of fraud might, both in volume and scope, fall far short of establishing the charge of perjury. But in the *Williamson case* the Court was not considering the sufficiency of the final proof as evidence, but its relevancy; not how much weight it had, but had it any weight at all. And the trial court was held to have committed error in admitting it as tending to substantiate the charge. Bearing in mind the nature and scope of the averments in that case and in this, I am wholly unable to conceive how a class of facts irrelevant and having no tendency to prove that charge of subornation of perjury could be relevant or have a tendency to prove this charge of fraud. [98]

For the reasons stated, I have concluded to allow the exceptions to paragraphs two, five, six, eight, twelve, and thirteen, and to deny the others. To be sure, in paragraph eight there are some averments relating to the primary application, but they are in substance only repetitions of allegations of a like character contained in other parts of the bill, and, with the designated paragraphs stricken out, the averments relating to the preliminary application are amply sufficient to admit of all proper evidence relating to fraud therein.

In reaching this conclusion, I have not been unmindful of the rule that if there is doubt of the pertinency of the matter excepted to, the exceptions should be denied, nor have I withheld due consideration of the complainant's suggestion that the reten-

tion in the bill of such matter, even if it be impertinent, would be without material prejudice to the defendants. It need only be said that my mind is free from doubt, and I am unwilling to permit needless augmentation of the expense of litigation which at best must be a heavy burden. It is sometimes said that impertinent matter may be retained, and, by the imposition of costs upon the offender, the rights of the innocent party may be fully protected. While not infrequently in cases of litigation between private parties such a course may be practicable, if we consider here only the interests of the defendants, the Government being the adversary party, and the power of the Court to impose costs being therefore limited, no adequate relief could thus be administered. But were it otherwise, considerations of [99] public interest require the court, so far as lies within its power, to check and not to lend its approval to the needless expenditure of public funds. Aside from the question of the impertinency of the paragraphs referred to, the volume of the bill is otherwise greatly enlarged by an affluence of synonyms and a rhetorical elaboration rarely found in pleadings of this character. The general rules of equity practice contemplate and require that bills shall be expressed in concise language, and shall contain no unnecessary verbiage. That the matter of expense to which I have referred is not trivial, but is a substantial consideration, becomes apparent by reference to the fact that at the threshold of this and two other suits of like nature, between practically the same parties, pending in



this court, the cost merely of taking out copies of the bills for service upon the defendants, as I am informed, exceeds six hundred dollars. If the averments of the bills are specifically traversed or admitted, as presumably they will be, the answers cannot well be less voluminous; and further considering the probability of separate answers, and the possibility of a record on appeal, the aggregate expense may easily become prohibitive upon a litigant of limited means.

Let an order be entered permitting the filing of the formal exceptions, and allowing the exceptions to paragraphs two, five, six, eight, twelve, and thirteen of the amended bill, and denying them as to other paragraphs thereof.

Dated this 30th day of November, 1909.

FRANK S. DIETRICH,  
Judge. [100]

[Endorsed]: Filed November 30th, 1909. A. L. Richardson, Clerk. [101]

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*In the Circuit Court of the United States, Ninth  
Circuit, District of Idaho, Northern Division.*

No. 388.

THE UNITED STATES OF AMERICA,  
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER.  
WILLIAM DWYER, CLARENCE W. ROBNETT,  
FRANK W. KETTENBACH,  
Defendants.



**Opinion on Demurrer.**

PEYTON GORDON, Esq., and GEO. V. TRIP-  
LETT, Jr., Esq., Special Assistants to the At-  
torney General, Solicitors for Complainant.

GEORGE W. TANNAHILL, Esq., Solicitor for De-  
fendants.

DIETRICH, District Judge:

By this suit the complainant seeks a decree annulling several patents for land issued under the provisions of what is known as the Timber and Stone Act, to different entrymen, who, it is alleged, in violation of the law, and contrary to their oaths, severally entered the lands as the agents and for the use and benefit of the defendants, who had heretofore conspired to procure the lands fraudulently, and to whom the entrymen severally conveyed the legal title after the issuance of patents, and prior to the commencement [102] of this suit. The alleged wrongful acts of the defendants and of the entrymen are set forth in great detail in the amended bill, to which the defendants have interposed a demurrer whereby it is objected: First, that the bill is, in certain particulars, uncertain and unintelligible; second, that the Court is without jurisdiction of the subject matter; third, that it does not appear that the complainant is entitled to any relief; and fourth, that the bill is multifarious in that the defendants are improperly joined.

The facts constituting the alleged fraud are, I think, stated with such clearness and detail that the defendants cannot be left in doubt as to what the

real issues are, and they are in no danger of being misled or taken by surprise.

It is not doubted that the Court has jurisdiction in proper cases to vacate patents procured by fraud, and only so far as it may be involved in the question whether or not complainant exhibits facts sufficient to entitle it to relief, is the point of jurisdiction relied upon.

As to the general question of the sufficiency of the bill, defendants' position is stated as follows:

“It affirmatively appears from the amended bill that the United States has not been defrauded; that the complainant has received the purchase price; that the entrymen were all qualified to make entry of the lands, and that each and all of the entrymen were entitled to acquire the lands; and the only complaint made by the complainant and pleaded in the amended bill is in regard to some details of the manner of acquiring the same, which in no way or manner affects the validity of the claimant's rights. . . . The fraud for which courts will set aside patents granted by the United States in the regular course of proceedings in the land office are frauds extrinsic or collateral to the matter tried and determined upon which the patent issued, and not fraud consisting of perjury in the matter on which the determination was made.” [103]

It may be inferred from the bill that the entrymen were duly qualified, and that they fully paid the purchase price for the land, no part of which the



Government has tendered, or now tenders, back. But it also affirmatively appears that, in their sworn preliminary statements filed in the land office, they falsely represented that they were entering the lands for their own use and benefit, whereas in fact they were acting as the agents of the defendants, and had, prior to making application, entered into agreements with the defendants to transfer title to them as soon as the same should be procured from the United States; all of the proceedings in the land department were *ex parte*.

In support of the contention that the Government cannot maintain a suit to set aside a patent procured by the perjured statements of an entryman, defendants rely almost exclusively upon *United States vs. White et al.*, 17 Fed. 561, and *United States vs. Miner*, 26 Fed. 672; but, upon appeal, the latter case was reversed by the Supreme Court of the United States (114 U. S. 233), and the correct rule, now universally prevailing, was stated to be that, "in proceedings like the present, wholly *ex parte*, no contest, no adversary proceedings, no reason to suspect fraud, but where the patent is the result of nothing but fraud and perjury, it is enough to hold that it conveys the legal title, and it would be going quite too far to say that it cannot be assailed by a proceeding in equity, and set aside as void, if the fraud is proved and there are no innocent holders for value." See, also, *United States vs. Clark*, 200 U. S. 601; *United States vs. Detroit Lumber Company*, 200 U. S. 321; and *Hyde vs. Shine*, 199 U. S. 62. [104]



To entitle the United States to the cancellation of a patent fraudulently procured, a return of the purchase money paid by the entryman is unnecessary. *United States vs. Trinidad Coal and Coking Company*, 137 U. S. 160. Even were this not a general rule, the act under the provisions of which these titles were obtained prescribes that if the entryman swears falsely in his preliminary application, not only shall he be subject to all the pains and penalties of perjury, but he shall also "forfeit the money which he may have paid for said lands, and all right and title to the same."

It remains to consider whether or not the bill is multifarious. "Multifariousness may be defined as the improper joining of distinct and independent matters in one bill, or the improper joinder of parties not connected with the controversy in its proper and legitimate scope." *Street on Fed. Eq. Prac.*, Sec. 399. In determining whether or not such an objection is well taken, general principles rather than specific rules must be applied. The question rests largely in considerations of convenience to the parties and to the court, and hence, with certain limitations, an objection for multifariousness is one addressed to the sound discretion of the court. No fixed general rule can be applied, but upon the peculiar facts of each particular case the Court must consider the real and substantial convenience of all concerned, and test the pleading accordingly.

The bill here avers combination and concert of action as between all of the defendants to fraudulently procure the issuance of the patents under con-

sideration. There is no intimation, however, that there [105] was any concert of action between the several entrymen, or that the proceedings relating to and resulting in the issuance of one patent had any connection whatsoever with the proceedings relating to and resulting in the issuance of any other patent. So far as appears, the several proceedings in the land office were entirely distinct one from the other. I cannot, therefore, yield to the contention of the Government that the case comes within the rule or principle applied by Mr. Justice Harlan in *Osborne vs. Wisconsin Central Railroad Company*, 43 Fed. 824, where it was found that "the issues between the railroad company and each of the plaintiffs depend upon precisely the same questions of law, and upon the same facts." There it was not possible that one plaintiff should succeed unless all succeeded. Here, it is obvious, the complainant may be successful in causing one patent to be cancelled and fail as to all of the others; or it may succeed as to all but one, and fail as to that, for the alleged acts of fraud upon the part of the entrymen, upon the proof of which the Government must primarily depend, took place at different times, and those relating to one patent had no necessary connection with those relating to any other patent. Apparently there is a misconception on the part of counsel both for the Government and for the defendants as to the essential nature and purpose of the suit. It is not an action in tort, brought to recover damages resulting from the execution of an unlawful conspiracy entered into by the defendants; nor are we concerned



with the essential averments of a criminal indictment charging conspiracy to defraud. The conspiracy which, with [106] such elaborate detail, is set forth in the bill is not the gist of complainant's right of action. Complainant might make proof sufficient to warrant a jury in finding the defendants guilty of the crime of conspiring to defraud the United States, and still fail of showing facts sufficient to entitle it to recover in this action. On the other hand, it might wholly fail to establish the existence of the alleged conspiracy, and still be entitled to a decree setting aside the patents for fraud. The action is directed to, and the decree sought would operate upon, the legal title to the several tracts of land described in the bill. The relief prayed for is that the present holders of the legal title be divested thereof, and that the complainant be reinvested therewith. The primary question is whether or not the several entrymen procured title by means of fraudulent representations. If they did so procure the title, complainant may demand that the patents be set aside, unless such title is now held by an innocent purchaser. It is, therefore, not primarily material whether there was a conspiracy or not. The conspiracy is relevant and material to the relief sought only so far as the existence thereof, if established, tends to prove the truth of the fundamental averment that the title was procured by false swearing. Considered only as conspirators, the defendants are not necessary parties defendant any more than are the several entrymen. The only indispensable parties are those whose rights would



or could be affected by the decree, [107] and they are the persons who have, or claim, some present interest in the lands or in the title thereto. It follows that all known persons having or claiming any interest, and only such, should be made defendants.

But it does not follow that because there were seventeen distinct proceedings in the land office to procure the patents now assailed, the bill should be held to be multifarious. It is here not only alleged that all the defendants acted in concert in inducing the entrymen fraudulently to procure the patents, but it is also expressly charged that, prior to the commencement of the suit, the several tracts of land were conveyed, in some instances to George H. Kester, in some instances to William F. Kettenbach, in some instances to George H. Kester and William F. Kettenbach, and in some instances to Clarence W. Robnett; and that in "each and every instance such conveyances were executed for the benefit of said defendants William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett, and Frank W. Kettenbach, or either or all of them, and other person or persons unknown to complainant, pursuant to the unlawful agreement hereinbefore alleged and set forth; and that by means of such conveyances from the said several other persons to whom the patents of the United States were issued, the several titles purporting to be issued by the United States and conveyed by the said patents are now vested in certain of the said defendants."

If the convenience of the complainant alone be considered, there is no question that, by permitting

the suit to proceed upon the bill as framed, a multiplicity of suits will be avoided, and its rights may be tried out with less expense than if it were driven to commence [108] and prosecute seventeen different suits. Upon the other hand, if only the convenience and substantial rights of the defendants be considered, can any different conclusion be reached? It is alleged that they hold the legal title to all of these lands, whether jointly or severally does not clearly appear; nor does it appear just what their several interests are; but it is alleged that they have some interest. It is further alleged that they were jointly engaged in the unlawful conspiracy, pursuant to which the entrymen were induced to make the entries, and, by false representations, to acquire the titles now sought to be divested. If any one of the defendants has no present interest in any of the lands, he may file a disclaimer, and thus be relieved from the burden of making a defense. If the defendants are jointly interested in all of the lands described, then clearly the inclusion of all of the tracts of land in the one bill can result only in great saving of expense to them; and it is not suggested, nor have I been able to apprehend, how any one of the defendants could be otherwise prejudiced in his substantial rights by reason of the joinder. True, there is no positive or unequivocal averment of joint interest in each separate tract, but, taken as a whole, I think the bill may be fairly construed as alleging that the defendants' present relations to all of the lands are such that the Government could not safely proceed against any one patent without joining all



of the defendants as parties defendant to the suit. Such being the case, every consideration of economy, both of time and of expense, is with the present form of the bill, and, there appearing to be no embarrassing complexity [109] of procedure, by which the substantial rights of any party will be prejudiced, I am unable to yield to the defendants' contention that the bill should be held to be multifarious.

In reaching this conclusion, I necessarily assume the truth of the allegations of the bill. If, after appropriate and timely pleading, proof shall disclose falsity in those parts of the bill charging conspiracy and community of ownership, it may then become proper to consider whether or not complainant should prevail, even if fraud be shown in some or all of the patent proceedings.

As has already been suggested, in considering an objection for multifariousness, the decided cases are, as a rule, of only incidental value, but, as throwing some light upon the question here decided, reference is made to *Brown vs. Guarantee Trust Co.*, 128 U. S. 403; *United States vs. Clark*, 129 Fed. 241; S. C., 200 U. S. 601; *United States vs. Curtner*, 26 Fed. 296; *Williams vs. Crabb*, 117 Fed. 193; *Western Land and Immigration Co. vs. Guinault*, 37 Fed. 523; *United States vs. Flournoy*, 69 Fed. 886; *Curran vs. Champion*, 85 Fed. 67; *Bitterman vs. Louisville & N. R. Co.*, 207 U. S. 205.

For the reasons stated, the demurrer will be overruled; let an order be entered accordingly, giving



defendants thirty days in which to answer.

Dated this 30th day of November, 1909.

FRANK S. DIETRICH,

Judge.

[Endorsed]: Filed November 30th, 1909. A. L. Richardson, Clerk. [110]

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*In the Circuit Court of the United States for the  
District of Idaho, Northern Division.*

Northern Division—No. 388.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Overruling Demurrer to Amended  
Complaint].**

On this day was announced the decision of the Court upon the demurrer to the amended complaint herein, heretofore argued and submitted, which decision is in writing and on file in said cause, and it is ordered that said demurrer be and is hereby overruled and the said defendants are given thirty days from this date in which to answer.

Dated November 30, 1909. [111]

*In the Circuit Court of the United States for the  
District of Idaho, Northern Division.*

Northern Division—No. 388.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Granting Defendants Leave to File Exceptions to Certain Paragraphs of Amended Bill].**

On this day was announced the decision of the Court upon the exceptions to the amended complaint herein, heretofore argued and submitted, which decision is in writing and on file in said cause, and it is ordered that the said defendants have leave to file formal exception to said amended bill of complaint and said exceptions are hereby allowed to paragraphs two, five, six, eight, twelve and thirteen of said amended bill of complaint, and denied as to the other paragraphs thereof.

Dated November 30, 1909. [112]

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*In the Circuit Court of the United States, Ninth  
Judicial Circuit, District of Idaho, Northern  
Division.*

No. 388.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEO. H. KESTER,

WILLIAM DWYER, CLARENCE W.  
ROBNETT, and FRANK KETTENBACH,  
Defendants.

**Exceptions to Amended Bill in Equity.**

To the Honorable, the Justices of the Circuit Court  
of the United States for the District of Idaho;

The defendants herein, William F. Kettenbach,  
Geo. H. Kester and William Dwyer, by leave of  
Court first had and obtained, files this their excep-  
tions to the Amended Bill in Equity filed herein May  
22, A. D. 1909, as follows:

1.

For that the allegations in the first paragraph of  
said Amended Bill beginning with the word "that,"  
the same being the first word in line five from the  
beginning of paragraph one, and ending with the  
word "office," the same being the last word on page  
two, is impertinent and should be expunged.

2.

For that the allegations in said Amended Bill  
commencing with the first word in line one of para-  
graph two, and ending with the word "possessions,"  
the same being the last word in paragraph two as  
follows:

"That pursuant to the authority given by said  
Act, the Commissioner of the General Land  
Office prescribed [113] and promulgated cer-  
tain regulations to give effect to the provisions  
of said Act, among other, the following:

That after the expiration of the 60 days' pub-  
lication, the person desiring to purchase the  
land described in his application to purchase



should under oath, make answer to certain questions as follows:

“ ‘Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way or manner, with any person whomsoever by which the title which you may acquire from the Government of the United States, may, inure, in whole or in part, to the benefit of any person except yourself?’ ”

And

“ ‘Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?’ ”

And

“ ‘Has any other person than yourself, or has any firm, corporation, or association, any interest in the entry you are now making, or in the land, or in the timber thereon?’ ”

Also the following:

“ ‘Did you pay, out of your individual funds, all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?’ ”

And

“ ‘Where did you get the money with which to pay for this land and how long have you had the same in your actual possession?’ ”

is impertinent and should be expunged.

## 3.

For that the allegations in paragraph 4 is impertinent, and the entire paragraph should be expunged.

## 4.

For that the allegations in said Amended Bill [114] commencing with the word "that," the same being the first word in paragraph 5 and ending with the word "them," the same being the last word in paragraph 5, is impertinent, and should be expunged.

## 5.

For that the allegations in paragraph 6 and especially that portion of paragraph 6 beginning with the word "and," the same being the 12th word in line 10 from the top of page 9, and the same being the 15th line of paragraph six, as follows:

"And it was further intended and contemplated by the said defendants that they should cause and procure each of the said other persons, who were to be induced to make entries as aforesaid, when such person should appear before the proper officers of the aforesaid land office to answer the interrogatories hereinbefore mentioned and set out, to declare on oath in answer to said interrogatories that he, the said person then applying to make entry, had paid out of his own individual funds all the expenses in connection with the filing by him made, and that he expected to pay for the land by him sought to be entered with his own money; and that the money with which he intended to pay for the said land was derived by him from other

sources than the defendants, and that he had had the said money in his actual possession for a longer period than in fact he had so had the same; the said defendants mutually intending, designing and contemplating that each of the said other persons, so to be caused and procured so to answer the said interrogatories should in doing so commit and be guilty of wilful and corrupt false swearing and should swear falsely and corruptly and should defraud the United States, and should fraudulently deceive and impose the officers of the United States concerned with the administration of the laws regulating the disposal of the public lands, inasmuch and because in truth and in fact each of the said persons so to be caused and procured to answer the said interrogatories in the manner and to the effect aforesaid should, as the said defendants intended and contemplated, before the making of such answers, have received from the said defendants or from some of them the money by him to be used in the purchase of the land sought by him to be entered and should not pay or intend or expect to pay for the said land out of his own individual funds or with his own money, and should not pay or intend or expect to pay the [115] expenses of his filing and entry out of such funds of money, and should, moreover, swear falsely and fraudulently in respect of other matters the subject of such interrogatories.”

is impertinent and should be expunged.



## 6.

For that the allegations in paragraph 7 beginning with the word “and,” the same being the 2d word in line 14 from the beginning of paragraph seven, and ending with the word “complainant,” the same being the 4th word in line 18 from the beginning of said paragraph seven, is impertinent, and should be expunged.

## 7.

For that the allegations in said Amended Bill commencing with the word “that,” the same being the 5th word in line 18 from the beginning of paragraph 7 and ending with the word “United States,” the same being the last word in paragraph 7, is impertinent and should be expunged.

## 8.

For that the allegations in paragraph 8 of said Amended Bill are impertinent and should be expunged.

## 9.

For that the allegations contained in paragraph 12 of said Amended Bill are impertinent and should be expunged.

## 10.

For that the allegations in paragraph 13 of said Amended Bill are impertinent and should be expunged.

## 11.

For that the allegations contained in paragraphs 14 and 15 of said Amended Bill are impertinent [116] and should be expunged.

## 12.

For that the allegations contained in paragraph

17 of said Amended Bill are impertinent and should be expunged.

13.

For that the allegations in said Amended Bill commencing with the word “and,” the same being the 11th word in line 17 from the top of the last page of said Amended Bill as follows:

“And the said defendants, and each of them, be held to pay to the Treasurer of complainant, all such reasonable sums of money as it may have found necessary to lay out and expend in the about discovering and establishing the fraud as is hereinbefore set forth and charged.”

are impertinent and should be expunged.

GEO. W. TANNAHILL,  
Solicitor for Defendants, William F. Kettenbach,  
Geo. H. Kester and William Dwyer, Residing  
at Lewiston, Idaho. [117]

State of Idaho,  
County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, upon oath says that he is the solicitor for the defendants named in the foregoing exception; that said exception is proposed in good faith, and not for the purpose of delay, and is as affiant verily believes, well founded in point of law.

GEO. W. TANNAHILL.

Subscribed and sworn to before me this 29 day of October, A. D. 1909.

[N. P. Seal]      SAMUEL O. TANNAHILL,  
Notary Public in and for Nez Perce County, State  
of Idaho.

[Endorsed]: Filed Nov. 30th, 1909. A. L. Richardson, Clerk. [118]

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*In the Circuit Court of the United States for the  
District of Idaho, Northern Division.*

IN EQUITY—No. 388.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order That the Defendants be Given Five Days  
Additional to Answer.**

On motion of George W. Tannahill, Esq., it is ordered that the defendants represented by George W. Tannahill be given five days additional to the time fixed to answer herein.

Dated December 21, 1909. [119]

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*In the Circuit Court of the United States for the  
District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KES-



TER, WILLIAM DWYER, CLARENCE  
ROBNETT and FRANK W. KETTEN-  
BACH,

Defendants.

**Disclaimer [of William Dwyer].**

The defendant, William Dwyer, now and at all times herein saving and reserving to himself all manner of benefit and advantage of exception to the many errors and insufficiencies in the complainant's amended bill in equity contained, says that he does not know that he, this defendant, to his knowledge or belief, ever had, or did he claim, or pretend to have, nor does he now claim, any right, title or interest of, in or to the estate and premises situate in the county of Nez Perce, State of Idaho, and in complainant's amended bill in equity set forth, or any part thereof, and this defendant does disclaim all right, title and interest to the said estate and premises in said complainant's amended bill in equity mentioned, and every part thereof; and this defendant denies all unlawful combination, agreement, conspiracy and confederacy in the said amended bill in equity charged, without that any other matter or thing material or necessary for this defendant to make answer unto and not herein and hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or belief of this defendant, [120] all which matters and things this defendant is ready to aver, maintain and prove, as this Honorable Court may direct, and humbly prays to be hence dismissed with his reason-

able costs and charges in this behalf most wrongfully sustained.

WILLIAM DWYER,  
Defendant.

GEO. W. TANNAHILL,  
Solicitor for Defendant, Residing at Lewiston,  
Idaho.

State of Idaho,  
County of Nez Perce,—ss.

William Dwyer, being duly sworn, says:

That he has read the foregoing disclaimer, subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated to be on his information or belief, and as to those matters that he believes it to be true.

WILLIAM DWYER.

Subscribed and sworn to before me this 31 day of  
December, 1909.

SAMUEL O. TANNAHILL,  
Notary Public in and for Nez Perce County, State  
of Idaho.

[Endorsed]: Filed January 5, 1910. A. L. Richardson, Clerk. [121]

*In the Circuit Court of the United States, for the  
District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KES-  
TER, WILLIAM DWYER, CLARENCE  
ROBNETT, FRANK W. KETTENBACH,  
Defendants.

**Answer [of Messrs. Kettenbach, Kester and Dwyer]  
to Amended Bill.**

ANSWER TO AMENDED BILL IN EQUITY.

To the Honorable, the Judges of the Circuit Court  
of the United States, for the District of Idaho:

The joint and several answers of the defendants,  
William F. Kettenbach, George H. Kester and Will-  
iam Dwyer to the amended bill in equity of the  
United States of America, complainant respectfully  
shows:

That these defendants now and at all times here-  
after saving and reserving to themselves all man-  
ner of benefit and advantage of exception to the  
many errors and insufficiencies in the complainant's  
said amended bill in equity contained, for answer  
thereto or to so much or such parts thereof as these  
defendants are advised is material for them to  
make answer unto, they answer and say:

1.

These answering defendants deny that heretofore,



to wit: On the first day of July, in the year 1902, or upon any other date, or at all, or at divers other times before or after that day, or before the making of the several entries hereinafter or in complainant's amended [122] bill in equity mentioned or designated, in the State of Idaho, or at all, William F. Kettenbach, George H. Kester, William Dwyer, Clarence Robnett or Frank W. Kettenbach, or either thereof, hereinbefore or in the caption of complainant's amended bill in equity named as defendants, or by the original bill filed in this cause, or by process duly issued and served therein, made parties defendant, did unlawfully and corruptly combine, conspire, confederate or agree together or with each other or with divers other persons, some of whom are hereinafter named or in complainant's amended bill in equity named, or others who are to the complainant unknown, or did form, make or enter into an unlawful, corrupt or fraudulent conspiracy, combination or agreement with each other, or the other persons aforesaid, for the purpose or to the end of defrauding the complainant of the title or ownership of divers large tracts of public land then owned by the complainant or lying in the district of public lands subject to entry at the land office of the United States located at Lewiston, in the State of Idaho, or for the purpose or to the end of defrauding the complainant out of the use, occupation or possession of the said tracts of public land, or for the purpose or to the end of acquiring by or for the said defendants, or by or for each of them, the title to larger areas of such public lands than could be, under or

in accordance with the laws of the United States providing for or regulating the disposal of such public lands, lawfully acquired by the said defendants, collectively or individually, or for the purpose of accomplishing the said ends or of so defrauding the said complainant by divers [123] fraudulent or unlawful means, that is to say, by means of false, fraudulent or unlawful entries to be made of the aforesaid tracts of public land at the land office aforesaid, or by means of perjury, the subornation of perjury, the procurement of false swearing, or by means of other falsehoods, false pretenses or misrepresentations, whereby the officers of the United States should be deceived or imposed upon, or should be induced or procured to divest the United States of its title to the said lands or to convey the said title of the United States to divers persons not lawfully entitled thereto, contrary to the laws of the United States, or for the benefit, advantage or profit of the said defendants, or either thereof.

## 2.

These answering defendants, and each thereof, deny that as a part of the said conspiracy or agreement so far as aforesaid made or entered into by the said defendants, or as a part of the said unlawful or fraudulent means whereby the said unlawful purposes of the said conspiracy were to be effected, it was, at the times or the place aforesaid by the said defendants, mutually agreed, designed or contemplated that they, the said defendants, should persuade, employ or otherwise induce or procure a large number of other persons severally to purchase



or to make entries of divers tracts of the public lands aforesaid under or in pretended or apparent accordance with the aforesaid act of Congress approved on June 3, 1878, as amended by the Act of Congress approved on August 4, 1892, or upon any other [124] date, or that before the said other persons should apply to enter or purchase such lands or should take any steps or initiate any proceedings to that end, or before the making of such entries or purchases, or as a means of persuading or inducing the said other persons to make such entries or purchases, the said defendants should make or enter into certain agreements, contracts or understandings with the said other persons, severally, whereby or by the terms of which agreements, contracts or understandings, the said defendants or some of them, should agree or contract to buy of the said other persons, severally, or the said other persons severally should agree or contract to sell to the said defendants, or to some of them, the respective tracts so to be entered or purchased by the said other persons when or so soon as the said other persons should obtain from the United States the titles to the said tracts by them to be entered or purchased, or shortly thereafter; or that, thereupon or after the making of such unlawful contracts or agreements or while the same should subsist or continue, the said defendants should cause or procure the said other persons severally to apply at the land office aforesaid to make entries of or to purchase divers tracts of the said public lands in professed accordance with the statutes aforesaid, or should cause or



procure each of the said persons so applying, at the time of making his application to enter, or in connection with or as a part of such application, to execute, sign, make oaths to or file in the said land office a sworn statement of the character, substance, tenor or purport [125] described by the said Act of Congress, approved on June 3, 1878, in which statement such applicant should declare or on his oath represent, among other things, that he, the said applicant, did not apply to purchase the land by him applied for on speculation, but in good faith to appropriate the same to his own exclusive use or benefit, or that he had not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself, the said defendants intending, designing, or contemplating that each of the said other persons so to be induced to make such applications or to file such sworn statements should in doing so commit or be guilty of wilful or corrupt perjury or should swear falsely or corruptly or should defraud the United States, or fraudulently deceive or impose upon the officers of the said land office or upon other officers of the United States charged with the administration of the laws regulating the disposal of the public lands, inasmuch or because in truth or in fact each of the said persons so to be induced to make such applications should, before the making of his said application or the filing of his said sworn state-

ment, as the said defendants intended or contemplated, have made with the said defendants or some of them, the agreement or contract aforesaid, by the terms of which such persons so to make application agreed to sell to the defendants or to some of them, or the defendants or some of them agreed to buy, the land or [126] the title which such person should acquire from the United States by means of the application or entry by him to be made.

## 3.

These answering defendants, and each thereof, deny that thereafter, or at all, or, that is to say, after the formation or making of the said unlawful conspiracy or agreement so as aforesaid made or entered into by the said defendants, or at divers times in the State of Idaho, in pursuance or execution of the said conspiracy, or for the purpose of effecting the said unlawful purpose thereof, the said defendants, or some of them, did make or enter into fraudulent, corrupt, or unlawful contracts, agreements, arrangements or understandings with a large number of persons, severally, that is to say, with Carrie D. Maris, John H. Little, Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Bertsell H. Ferris, George Ray Robinson, Charles W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, Fred E. Justice, Edgar H. Dammarell or Benjamin F. Long, or either thereof, severally, or with divers other persons who are to the complainant now unknown, but whose names, when the same shall be discovered, the complainant prays leave to add to its



bill by proper amendment and to seek appropriate relief in respect of the lands alleged to have been by them fraudulently obtained from the complainant; or that in or by the said unlawful contracts, agreements, arrangements or understandings so as aforesaid made by the said defendants with the said other persons, each of the said other persons severally [127] agreed or arranged with the said defendants, or with some of them, that he or she would make an entry or purchase of a tract of the public land of the United States under or in pretended or apparent accordance with the aforesaid Act of Congress, approved on June 3, 1878, as amended on August 4, 1892, or at all, or would, upon obtaining title to the said tract from the United States, convey the said title or tract to the defendants or to some of them; or the said defendants, or some of them, acting for all, agreed, contracted or arranged that they would pay to each of the said other persons a certain sum of money for the tract of land by him or her so to be entered or by way of recompense to such person for his or her costs, labor or trouble incurred in acquiring title to the said tract from the United States, or the said defendants further agreed or promised to furnish or advance to each of the said other persons so much money as might be necessary to enable him or her to pay for such land or to defray the other expenses incident to the obtaining of title to such land from the United States, or at all.

## 4.

These defendants, and each thereof, deny that at the divers or several times hereinbefore or in com-



plainant's amended bill in equity referred to, the said Carrie D. Maris, or the other persons hereinbefore or in complainant's amended bill in equity named or stated to have made or entered into certain unlawful, corrupt or illegal agreements, arrangements or understandings with the said defendants, severally did apply to enter or did make entries of divers tracts of public land of the United States subject to disposal at the aforesaid land office, or [128] each of the said persons did consequently or in the usual course of administration of the public laws obtain from the United States a patent whereby the United States conveyed to each of the said persons, severally, the tracts by him or her entered, or that is to say, that the said Carrie D. Maris did make entry of or obtain a patent conveying to her the southeast quarter of the southwest quarter of section 12, or the east half of the northwest quarter or the northeast quarter of the southwest quarter of section 13, in township 36, north of range 5, *each* of the Boise meridian, but admit that the said Carrie D. Maris did obtain a patent to the said tract of land, and admit that the said John H. Little did obtain a patent to the land described in paragraph nine of complainant's amended bill in equity, and admit that Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Benjamin F. Long, Bertsel H. Ferris, George Ray Robinson, Charles W. Taylor, Jackson O'Keefe, Edgar H. Taylor, Joseph H. Prentice, Fred E. Justice and Edgar H. Dammarell, did obtain patents to the tracts of land set out and specifically described

in paragraph nine of complainant's amended bill in equity, except that these defendants deny that the said Benjamin F. Long did on June 18, 1903, or at any other time, make entry of, or on August 3, 1904, did obtain a patent conveying to him the south half of the northwest quarter and the south half of the northeast quarter of section 18, in township 33 N., R. 3 E., B. M., and deny that Edgar H. Dammarell did on July 25, 1904, make entry of, or on December 31, 1904, obtained a patent conveying to him the northeast quarter [129] of section 10, in Township 38 N., R. 6 E., B. M.; and these defendants deny that any agreement, contract or understanding was ever made or entered into with either of said entrymen for the purchase of the said tracts of land or the acquiring of title thereto by these defendants, or either thereof, prior to the time the said sworn statements were filed, or the applications to enter the said tracts were made, or the making of final proof thereof.

## 5.

These defendants, and each thereof, deny that each of the said persons so making entry of or obtaining title to the tract by him or her entered did apply to make or did make such entry, or did prosecute or carry on the proceedings, at the solicitation or instigation of the said defendants, being moved or stimulated thereto by the advice, request or promises of the said defendants, or therein acting upon, in pursuance of, or in accordance with the unlawful, corrupt or fraudulent agreement, arrangement or understanding theretofore made or entered into as



aforesaid between him or her or the said defendants, which said agreement, arrangement or understanding continued or subsisted throughout the whole of the said proceedings, whereby it had been or was agreed that the said defendants should buy from each of the said persons, or each of the said persons should sell or convey to the said defendants, the tract or the title by him or her to be acquired from the United States.

## 6.

These defendants, and each thereof, deny that each of the persons named in paragraph nine or ten of complainant's amended bill in equity, or stated to have [130] made entries, severally, of certain tracts of public land, in connection with his or her application to make entry of such land, or as a part of the said application, or as a necessary or material step in the proceedings to obtain a patent for the land by him or her sought to be entered, did file in the said land office a written statement, of the character, substance, tenor or purport prescribed by the Act of Congress aforesaid, wherein such person did, on his or her oath, falsely, fraudulently, or deceitfully swear in substance that he or she was not applying to purchase the tract of land by him or her sought to be entered on speculation, but in good faith to appropriate the same to his or her own exclusive use or benefit, or that he or she had not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he or she should acquire from the Government of the United States should inure in



whole or in part to the benefit of any person except himself or herself, or whereas in truth or in fact each of the said persons was applying to enter the tract by him or her sought to be entered upon speculation, or not for his or her own exclusive use or benefit, or had made an unlawful or fraudulent agreement with the said defendants, as aforesaid, whereby the title by him or her to be acquired should inure to the use or benefit of the said defendants; or the said statements so made by the said persons or each of them were known by the said persons, or by each of them, or were known by the said defendants, to be false, untrue, fraudulent or deceitful. [131]

## 7.

These defendants, and each thereof, deny that by reason of the facts in complainant's amended bill in equity stated, or by reason of the unlawful conspiracy among the said defendants, the unlawful agreements between the said defendants or the said other persons who made the entries herein enumerated or designated, the perjury procured by the said defendants or committed by the said other persons in the procurement of the said entries, or the false swearing, misrepresentations or concealment of material facts committed or practiced by the said persons, or of the other matters which are in complainant's amended bill in equity set out, the said entries, or each of them, were unlawfully made, or were or are illegal, fraudulent, or invalid, or that the United States was or is defrauded thereby, or that, by reason of the said facts, the officers of the United States, charged with the administration of the laws provid-

ing for or governing the disposal of the public lands, or concerned in the transactions herein or in complainant's amended bill in equity stated, were deceived, defrauded, misled or imposed upon, or caused to allow the said entries to be made, or induced to approve the said entries or to issue patents thereon; or that the said patents, by reason of the said facts are invalid, or are voidable at the suit of the United States, as having been procured by fraud, perjury, misrepresentation or imposition, or in violation of law, or as having been issued or granted under fraudulent imposition or mistake of fact, or in fraud of the United States, or at all. [132]

## 8.

These defendants, and each thereof, deny that the said defendants, William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett, or Frank W. Kettenbach, or either thereof, by their aforesaid several unlawful, corrupt or fraudulent schemes or practices, or by or through the various persons in complainant's amended bill in equity mentioned as employed by them for that purpose, fraudulently obtained or procured the patents of complainant to be issued to the various persons in complainant's amended bill in equity mentioned in connection with the several descriptions of said lands mentioned and set out, or as complainant further avers or charges that the said pretended patents to the lands described in complainant's amended bill in equity, were procured, as the defendants, William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett, or Frank W. Kettenbach, or



either, or each of them, well knew at the time of procuring the same, in violation of the laws of the United States; or as complainant further avers or charges that in the case of each or every of such tracts of land in complainant's amended bill in equity described, the acts or conduct of the said defendants, William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett or Frank W. Kettenbach, or either or each of them, or each or every of their employees or confederates, were illegal or fraudulent, or that the patents procured from this complainant by or on behalf of said defendants, were or are, in each or every instance, fraudulent, invalid or voidable as against the complainant, or contrary to equity or good conscience, or being so, or the titles purporting to be conveyed thereby being vested in certain [133] of the said defendants, the said patents ought to be vacated, set aside, avoided or for naught held, or at all.

## 9.

These defendants, and each thereof, deny that the or any patents were so unlawfully or fraudulently procured from complainant by or on behalf of the said defendants, William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett, or Frank W. Kettenbach, or either thereof, for the several tracts of land in complainant's amended bill in equity mentioned or described, but admit that all of said patents were issued by the complainant in each and every instance within six years of the filing of the complainant's amended bill in equity, on file herein.



## 10.

These defendants and each thereof deny that pursuant to the said unlawful or corrupt combination, conspiracy or agreement, alleged and set forth in complainant's amended bill in equity, or to effect the object or purpose thereof, the said William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett or Frank Kettenbach, or either thereof, did induce the said several other persons named in complainant's amended bill in equity in connection with the description of the several tracts of land, to convey the same, in some instances to George H. Kester, in some instances to William F. Kettenbach, by the name of W. F. Kettenbach, or in some instances to George H. Kester and William F. Kettenbach, or George H. Kester and W. F. Kettenbach, or Kester and Kettenbach, or in some instances to Clarence W. Robnett, by the name of C. W. Robnett; or that in each or every instance such [134] conveyances were executed for the benefit of the said defendants, William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett or Frank W. Kettenbach, or either or all of them, or other person or persons unknown to complainant, pursuant to the unlawful agreement alleged or set forth in complainant's amended bill in equity; or that, by means of such conveyances from the said several other persons to whom the patents of the United States were issued, the several titles purporting to be issued by the United States or conveyed to the said patentees, are now vested in certain of the said defendants, but admit that George H. Kester and William F. Ketten-

bach, at various times, purchased the said tracts of land, having purchased some thereof from the entrymen themselves, and purchased a few thereof from Clarence W. Robnett, and some thereof from other persons, the transferees of the entrymen, but deny that the said purchases were made pursuant to any conspiracy, agreement, combination or understanding prior to the filing of the sworn statement or the making of final proof for the said tracts by the various entrymen.

## 11.

Deny that the said complainant has been cheated or defrauded out of its public lands, or is remediless at or by the strict rules of the common law, or is only relievable in a court of equity wherein such matters are fully cognizable or reviewable, and deny that the defendants William F. Kettenbach, George H. Kester, William Dwyer, Clarence W. Robnett or Frank W. Kettenbach, should be required to make full, true, direct or certain answers, according to the best of their knowledge, information or belief, to all and singular the matters or [135] charges aforesaid.

## SECOND.

For a further, separate and second defense, these answering defendants allege:

## 1.

That at the time the said several entrymen obtained title to the tracts of land set out and specifically described in paragraph nine of complainant's amended bill in equity, the said entrymen, John H. Little, Ellsworth M. Harrington, Wren Pierce, Ben-



jamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Benjamin F. Long, Bertsel H. Ferris, George Ray Robinson, Charles W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, Fred E. Justice and Edgar H. Dammarell, were citizens of the United States and qualified to make entry and acquire title under the timber and stone laws of the United States to one hundred sixty acres of land, and to the land set out and specifically described in said paragraph nine of complainant's amended bill in equity, and did upon the dates and at the times referred to in said paragraph nine acquire title to the various tracts of land set out and specifically described therein, except that he said Benjamin F. Long acquired no title to any lands in section 13, township 37 N., R. 3 E., B. M., and the said Edgar H. Dammarell acquired no title to lands in section 10, township 38 N., R. 6 E., B. M.

## 2.

That the said several entrymen did, on or about the time alleged in paragraph nine of complainant's amended [136] bill in equity, file their sworn statements in compliance with the provisions of the timber and stone laws of the United States, and in good faith acquired title to the several tracts of land set out and specifically described in paragraph nine of complainant's amended bill in equity, and a patent thereto was duly issued to said entrymen.

## 3.

That subsequent thereto, and in due course of business, George H. Kester and William F. Kettenbach purchased the said tracts of land, a portion thereof



having been purchased from the individual entrymen by William F. Kettenbach, and a portion thereof having been purchased by the defendants George H. Kester and William F. Kettenbach, and conveyances were duly and regularly issued therefor, and after title had been acquired by the said entrymen, the said conveyances were made to the said George H. Kester and William F. Kettenbach, as follows:

**CARRIE D. MARIS.**

The said Carrie D. Maris, prior to the 21st day of November, 1902, filed her sworn statement and thereafter acquired title to the southeast quarter of the southwest quarter of section 12, and the east half of the northwest quarter and the northeast quarter of the southwest quarter of section 13, Township 36 N., R. 5 E., B. M., and paid the purchase price therefor, and thereafter on the 2d day of June, 1903, sold and transferred the said land to Clarence W. Robnett, and the defendants, William F. Kettenbach and George H. Kester, did thereafter, on July 12, 1906, purchase the same from the said Clarence W. Robnett, and the said Clarence W. Robnett, joined therein by his wife, Jennie M. Robnett, by warranty deed [137] of conveyance, for value, transferred the said tract of land to the defendants, William F. Kettenbach and George H. Kester, who now hold the legal title to the same; that the defendants, or either thereof, had no contract or understanding or agreement of any kind or nature with the said Clarence W. Robnett or with the said Carrie D. Maris for the purchase of said tract of land prior to the filing of the said sworn statement of the said Carrie D. Maris

therefor, or prior to her acquiring title to the said tract of land.

### JOHN H. LITTLE.

The said John H. Little, prior to June 15th, 1903, filed his sworn statement and thereafter acquired title to lot 1 and the west half of the northeast quarter and the southeast quarter of the northeast quarter of section 25, Township 39 N., R. 3 E., B. M., and thereafter, and on the 24th day of October, 1904, the said John H. Little, joined therein by his wife, Edna Fife Little, sold and transferred the said land by warranty deed of conveyance, for value, to the defendant, William F. Kettenbach, who now holds the legal title to the said tract of land, and that the said purchase was made in good faith, without any understanding or agreement of any kind or nature made with the said John H. Little prior to the time the said John H. Little filed his sworn statement and made application for the purchase of the same under the timber and stone laws of the United States.

### ELLSWORTH M. HARRINGTON.

That the said Ellsworth M. Harrington, prior to June 15, 1903, filed his sworn statement and thereafter acquired title to lot 1 and the northwest quarter of the [138] northeast quarter and the north half of the northwest quarter of Section 24, Township 39 N., R. 3 E., B. M., in Idaho, containing 164 acres, and thereafter, on the 18th day of May, 1906, the said Ellsworth H. Harrington, joined therein by his wife, Anna E. Harrington, sold and transferred the said land for value to the defendant, William F. Kettenbach, who now holds the legal title to the same; that



the said William F. Kettenbach had no contract, understanding or agreement of any kind or nature for the purchase of said tract prior to the time the said Ellsworth M. Harrington filed his sworn statement and made application for the purchase of the same under the timber and stone laws of the United States.

#### WREN PIERCE.

That prior to the 17 day of June, 1903, the said Wren Pierce filed his sworn statement and thereafter acquired title to the southeast quarter of section 22, township 39 N., R. 3 E., B. M., and thereafter and in due course of business, and on May 31st, 1904, for value, sold and transferred the same to the defendant, William F. Kettenbach, who now holds the legal title thereto, and that the said William F. Kettenbach, or none of the defendants, had any contract or understanding or agreement of any kind or nature for the purchase of said tract prior to the time the said Wren Pierce filed his sworn statement and made application for the purchase of the same under the timber and stone laws of the United States.

#### BENJAMIN F. BASHOR.

That prior to the 17th day of June, 1903, the said Benjamin F. Bashor filed his sworn statement and thereafter acquired title to lot 4, and the southwest [139] quarter of the southeast quarter, and the south half of the southwest quarter of section 24, township 39 N., R. 3 E., B. M., and thereafter and in due course of business, on April 12, 1906, for value, the said Benjamin F. Bashor, joined therein by his wife, Emma C. Bashor, sold and transferred the said



land to the defendant, William F. Kettenbach, who now holds the legal title to the same, and the said defendant, William F. Kettenbach, nor any of the defendants herein, had any understanding, contract or agreement with the said Benjamin F. Bashor for the purchase of said tract of land prior to the time the said Benjamin F. Bashor filed his sworn statement and made application to purchase the same, or prior to the time the said Benjamin F. Bashor acquired title thereto.

**JOSEPH B. CLUTE.**

That prior to June 17th, 1903, the said Joseph B. Clute filed his sworn statement and thereafter acquired title to the south half of the northeast quarter and the east half of the southeast quarter of section twenty-six in township thirty-nine North, of Range 3 E., B. M., and thereafter, in due course of business, on June 17th, 1903, for value, sold and transferred the same to the defendants, William F. Kettenbach and George H. Kester; that neither the said William F. Kettenbach nor the said George H. Kester, or any of the defendants herein, had any contract or understanding or agreement of any kind or nature for the purchase of said tract prior to the time the said Joseph B. Clute filed his sworn statement or prior to the time the said Joseph B. Clute acquired title thereto; that the said William F. Kettenbach, nor George H. Kester, nor either thereof now hold the legal title to the said tract of land, nor did they hold the legal title to the same at the [140] time of the institution of this action, or the filing of the original bill in equity of the complainant herein,

or at the time of the filing of the *lis pendens* in this action.

FRANCIS M. LONG.

That the said Francis M. Long, prior to June 18, 1903, filed his sworn statement and thereafter acquired title to the north half of the southwest quarter and north half of the southeast quarter of section 13, township 39 North, of Range 3 E., B. M., and thereafter, and after the said Francis M. Long had acquired title to said tract of land, with his wife, Annie E. Long, on August 9, 1904, for value, by warranty deed of conveyance, sold and transferred the said tract of land to William F. Kettenbach, and the legal title to the same now stands of record in the said William F. Kettenbach; that the said William F. Kettenbach had no contract, understanding or agreement of any kind or nature for the purchase of said tract prior to the time the said Francis M. Long filed his sworn statement and made application for the purchase of the same under the timber and stone laws of the United States.

JOHN H. LONG.

That the said John H. Long, prior to June 18, 1903, filed his sworn statement and application to purchase under the timber and stone laws of the United States, lot 2 and the southwest quarter of the northeast quarter and the south half of the northwest quarter of section 24, township 39 N., R. 3 E., B. M., containing 156.14 acres, and thereafter [141] acquired title to the same, and after having acquired title to said tract of land, to wit: On July 21, 1904, the said John H. Long, by his warranty deed of conveyance,



for value, and in due course of business, sold and transferred the said tract of land to William F. Kettenbach, who now holds the legal title to the same, and none of the defendants herein had any contract, understanding or agreement with the said John H. Long, either directly or indirectly, for the purchase of said tract of land prior to the filing of his sworn statement therefor, or prior to the said John H. Long acquiring title to the same.

BENJAMIN F. LONG.

That the said Benjamin F. Long, prior to June 18, 1903, filed his sworn statement and made entry under the timber and stone laws of the United States for the south half of the northwest quarter and the south half of the northeast quarter of section 13, township 39 N., R. 3 E., B. M., containing 160 acres, and after acquiring title to said tract of land, the said Benjamin F. Long, by warranty deed of conveyance, on July 25, 1904, sold and transferred the said tract of land, for value, and in due course of business, to the defendant, William F. Kettenbach, who now holds the legal title to the same, and that the said William F. Kettenbach, nor any of the defendants herein, had any contract, agreement or understanding in any way with the said Benjamin F. Long for the purchase of said tract of land prior to the said Benjamin F. Long filing his sworn statement and acquiring title to the said tract of land. [142]

BERTSEL H. FERRIS.

That the said Bertsel H. Ferris, prior to June 26, 1903, filed his sworn statement and made entry under the timber and stone laws of the United States of



lot 3 and the northwest quarter of the southeast quarter and the north half of the southwest quarter of section 24, township 39 N., R. 3 E., B. M., containing 148.10 acres, and thereafter acquired title to the same, and after acquiring title to said tract of land, by his warranty deed of conveyance, on the 16th day of January, 1907, the said Bertsel H. Ferris, joined therein by his wife, Mabel Ferris, for value, duly sold and transferred said tract of land to the defendant, William F. Kettenbach, who now holds the legal title to the same, and that neither the said William F. Kettenbach, nor any of the defendants herein, had any contract, agreement or understanding with the said Bertsel H. Ferris for the purchase of said tract of land prior to the said Bertsel H. Ferris filing his sworn statement and application to purchase the same, and prior to his acquiring title thereto.

#### GEORGE RAY ROBINSON.

That the said George Ray Robinson, prior to June 26, 1903, filed his sworn statement and application to purchase under the timber and stone laws of the United States, the north half of the northwest quarter and the north half of the northeast quarter of section 26, township 39 N., R. 3 E., B. M., containing 160 acres, and thereafter acquired title thereto, and after acquiring title to the same, by his warranty deed of conveyance, on the 16th day of October, 1905, for value, and in due course of business, sold and transferred the said tract of land [143] to the defendant, William F. Kettenbach, who now holds the legal title to the same, and the said defendant, William F.

Kettenbach, nor any of the defendants herein, had any contract or agreement, either directly or indirectly, or any understanding with the said George Ray Robinson for the purchase of the said tract prior to the filing of his sworn statement, or prior to his acquiring title thereto.

#### CHARLES W. TAYLOR.

That the said Charles W. Taylor, prior to the 11th day of July, 1904, filed his sworn statement and application to purchase under the timber and stone laws of the United States, lots 1, 2, and east half of northwest quarter of section 30, township 38 N., R. 6 E., B. M., containing 157.80 acres, and thereafter acquired title to the same, and after having acquired title to the said tract of land, by his warranty deed of conveyance, on the 12th day of July, 1904, for value, duly sold and transferred to the defendants William F. Kettenbach and George H. Kester said tract of land, who now hold the legal title thereto, and that neither the said defendants, William F. Kettenbach nor George H. Kester, nor any of the defendants herein, had any contract or agreement with the said Charles W. Taylor prior to the filing of his sworn statement or prior to the acquiring of title to the said tract of land, for the purchase of the same, either directly or indirectly.

#### JACKSON O'KEEFE.

That the said Jackson O'Keefe, prior to the 11th day of July, 1904, filed his sworn statement and application for the purchase, under the timber and stone laws of the [144] United States, of the east



half of the southwest quarter, and the west half of the southeast quarter of section 23, township 38 N., R. 5 E., B. M., and thereafter acquired title to the same, and after having acquired title to said tract of land, by his warranty deed of conveyance, for value, and in due course of business, duly sold and transferred the same to the defendants, William F. Kettenbach and George H. Kester, who now hold the legal title thereto, and the said defendants, nor either thereof, had any contract, or agreement, or understanding of any kind or nature, for the purchase of said tract of land prior to the filing of the sworn statement of the said Jackson O'Keefe therefor, or prior to his acquiring title to the same.

#### JOSEPH H. PRENTICE.

That the said Joseph H. Prentice, prior to the 11th day of July, 1904, filed his sworn statement and application under the timber and stone laws of the United States, for the purchase of lots 1 and 2 and the east half of the northwest quarter of section 18, township 38 N., R. 6 E., B. M., containing 156.60 acres, and thereafter acquired title to the same, and after acquiring title to said tract of land, by warranty deed of conveyance, the said Joseph H. Prentice, joined therein by his wife, Emma A. Prentice, on the 25th day of July, 1904, for value, and in due course of business, sold and transferred the said tract of land to Jackson O'Keefe, who thereafter, and in due course of business and for value, on July 30th, 1904, by his warranty deed of conveyance sold and transferred the said tract of land to [145] the defendants, William F. Kettenbach and George H.



Kester, who now hold the legal title to the same; that the defendants, or neither thereof, had no contract or understanding or agreement of any kind or nature with the said Jackson O'Keefe, or with the said Joseph H. Prentice, for the purchase of said tract of land prior to the filing of the said sworn statement of the said Joseph H. Prentice therefor, or prior to his acquiring title to said tract of land.

FRED E. JUSTICE.

That the said Fred E. Justice, prior to the 13th day of July, 1904, filed his sworn statement and application to purchase under the timber and stone laws of the United States, the east half of the northeast quarter and the east half of the southeast quarter, section 20, township 38 N., R. 6 E., B. M., and thereafter acquired title to the same, and after acquiring title to said tract of land, by his warranty deed of conveyance, on the 13th day of July, 1904, for value, and in due course of business, sold and transferred the said tract of land to the defendants, William F. Kettenbach and George H. Kester, who now hold the legal title to the same, and that the said defendants, nor either thereof, had any contract, understanding or agreement with the said Fred E. Justice for the said tract of land prior to the filing of his sworn statement therefor, or prior to his acquiring title to the same.

EDGAR H. DAMMARELL.

That the said Edgar H. Dammarell, prior to July 25, 1904, filed his sworn statement and application [146] to purchase under the timber and stone laws of the United States, the northeast quarter of section 19, township 38 N., R. 6 E., B. M., containing 160

acres, and thereafter acquired title thereto, and after acquiring title to said tract of land, by his warranty deed of conveyance, joined therein by his wife, Nellie M. Dammarell, on the 26th day of July, 1904, for value, and in due course of business, sold and transferred the said tract of land to Jackson O'Keefe, and thereafter, on July 30th, 1904, the said Jackson O'Keefe, for value and in due course of business, by his warranty deed of conveyance, sold and transferred the said tract of land to the defendants, William F. Kettenbach and George H. Kester, who now hold the legal title to the same, and that the defendants, nor either thereof, had any contract, understanding or agreement with the said Edgar H. Dammarell or the said Jackson O'Keefe, or either thereof, for the purchase of the said tract of land, prior to the filing of the sworn statement of the said Edgar H. Dammarell, or prior to his acquiring title thereto.

#### EDGAR J. TAYLOR.

That prior to July 11, 1904, the said Edgar J. Taylor filed his sworn statement and application to purchase under the timber and stone laws of the United States, lots 3, 4, and the east half of the southwest quarter of Section 18, Township 38 N., R. 6 E., B. M., containing 157 acres, and thereafter acquired title to the same, and after acquiring title to said tract of land, by his warranty deed of conveyance, on July 12, 1904, sold and transferred the said tract of land to the defendants, William F. Kettenbach and George H. Kester, who now hold the legal title [147] to the same, and the said defendants,



nor either thereof, had any contract, understanding, or agreement with the said Edgar J. Taylor, either directly or indirectly, for the purchase of said tract of land, prior to the filing of his sworn statement and application to purchase the same, and prior to his acquiring title thereto.

## 4.

That the said defendant, William Dwyer, has and never did have any interest in or to the said tracts of land, of any kind or nature, and the said William Dwyer enters a disclaimer of any part or portion of said tracts of land, or either thereof.

## THIRD.

For a further, separate and third defense, these defendants, and each thereof, allege:

## 1.

That the perjury, subornation of perjury and conspiracy alleged and pleaded in complainant's amended bill in equity, are barred by the provisions of Sections 1043 and 1044, Revised Statutes of the United States of America.

## 2.

These defendants deny all unlawful combination, confederacy and conspiracy in said bill charged, without that any other matter or thing material or necessary for these defendants to make answer unto and not herein and hereby well or sufficiently answered unto, confessed or avoided, traversed or denied, is true to the knowledge or [148] belief of these defendants, all which matters and things these defendants are ready to aver, maintain and prove, as this Honorable Court shall direct, and humbly



pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

WILLIAM F. KETTENBACH,  
GEO. H. KESTER,  
WILLIAM DWYER,

Defendants.

GEO. W. TANNAHILL,  
Solicitor for Defendants, Residing at Lewiston,  
Idaho. [149]

State of Idaho,  
County of Nez Perce,—ss.

William F. Kettenbach, George H. Kester, and  
William Dwyer, being duly sworn, depose and say:

That they have read the foregoing answer subscribed by them and know the contents thereof, and that the same is true of their own knowledge, except as to matters which are therein stated to be upon their information or belief, and as to those matters that they believe it to be true.

WILLIAM F. KETTENBACH.  
GEORGE H. KESTER.  
WILLIAM DWYER.

Subscribed and sworn to before me this 31st day  
of December, 1909.

SAMUEL O. TANNAHILL,  
Notary Public in and for Nez Perce County, State  
of Idaho.

[Endorsed]: Filed January 5, 1910. A. L.  
Richardson, Clerk. [150]

*In the Circuit Court of the United States for the  
District of Idaho, Northern Division.*

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.  
KESTER, WILLIAM DWYER, CLAR-  
ENCE ROBNETT, FRANK W. KETTEN-  
BACH,

Defendants.

**Replication to Answer [of Messrs. Kettenbach,  
Kester and Dwyer].**

Replication of complainant, in the above-entitled cause, to the answer of defendants William F. Kettenbach, George H. Kester, and William Dwyer, to the complainant's amended bill of complaint.

This replicant, saving and reserving to itself all advantage of exception to the manifold insufficiencies, errors and uncertainties of the answer of the said defendants, William F. Kettenbach, George H. Kester and William Dwyer, for replication thereto, says: That it will aver, maintain and prove its said bill of complaint to be true and sufficient, and that the said answer of the said defendants, William F. Kettenbach, George F. Kester and William Dwyer is untrue, evasive and insufficient; wherefore, it prays relief as in its said amended bill set forth.

PEYTON GORDON,

Special Assistant to the Attorney General,

Solicitor for Complainant.

[Endorsed]: Filed February 7th, 1910. A. L. Richardson, Clerk. [151]

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*In the Circuit Court of the United States for the  
District of Idaho, Northern Division.*

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,  
Complainant,  
vs.

WILLIAM F. KETTENBACH, GEORGE H.  
KESTER, WILLIAM DWYER, CLAR-  
ENCE ROBNETT, FRANK W. KETTEN-  
BACH,  
Defendants.

**Replication to Answer and Disclaimer [of William  
Dwyer].**

Replication of complainant, in the above-entitled cause, to the answer and disclaimer of William Dwyer, defendant.

This replicant, saving and reserving all advantage of exception to the manifold insufficiencies of said answer and disclaimer of the said defendant, William Dwyer, for replication thereto, saith: That it will ever aver, maintain and prove its said bill to be true and sufficient in law, and that said answer and disclaimer is untrue and insufficient; wherefore, replicant prays relief as in said amended bill of complaint set forth.

PEYTON GORDON,  
Special Assistant to the Attorney General,  
Solicitor for Complainant.



[Endorsed]: Filed February 7th, 1910. A. L. Richardson, Clerk. [152]

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**[Praecipe for Entry of Appearance of C. W. Robnett  
in Case No. 388.]**

Spokane, Wash., April 7th, 1910.

A. L. Richardson,  
Clerk of U. S. Court,  
Boise, Idaho.

Dear Sir:

Please enter my general appearance in the following cause:

Equity—No. 388.

UNITED STATES

vs.

WM. F. KETTENBACH et al.

Yours,

C. W. ROBNETT,  
Defendant.

[Endorsed]: Filed April 16, 1910. A. L. Richardson, Clerk. [153]

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**[Application of Messrs. Kettenbach, Kester and  
Dwyer to File Fourth Defense and Plea in Bar  
to Amended Bill.]**

*In the Circuit Court of the United States within  
and for the District of Idaho, Northern Division.*

No. 388.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEO. H. KES-

TER, and WILLIAM DWYER, CLARENCE W. ROBNETT, and FRANK W. KETTENBACH,

Defendants.

APPLICATION TO FILE FOURTH DEFENSE  
AND PLEA IN BAR TO COMPLAINANT'S  
AMENDED BILL IN EQUITY ON FILE  
HEREIN.

Come now the defendants herein, William F. Kettenbach, George H. Kester and William Dwyer, and present their fourth defense and plea in bar, and ask that they be permitted to file the same on the grounds and for the following reasons:

1.

That the said fourth defense and plea in bar is material, relevant and competent and a proper defense to be interposed and pleaded to the complainant's amended bill in equity on file herein.

2.

That the issues raised by the said fourth defense and plea in bar cannot be tried or determined unless the same are affirmatively pleaded.

This application is made and based on the complainant's amended bill in equity on file herein, the defendants' fourth defense and plea in bar herewith presented for filing and all the files and records in the above-entitled cause.

GEO. W. TANNAHILL,  
Solicitor for Defendants, Residing at Lewiston,  
Idaho.

State of Idaho,

County of Nez Perce,—ss.

Geo. W. Tannahill, being duly sworn, upon oath

says that he is the solicitor for the defendants above named, that the foregoing application is made in good faith, and not for purpose of delay and is as affiant verily believes well founded in point of law.

GEO. W. TANNAHILL. [154]

Subscribed and sworn to before me this 5th day of May, A. D. 1910.

[N. P. Seal]

GEO. E. ERB,

Notary Public in and for Nez Perce County, State of Idaho.

[Endorsed]: Filed May 9, 1910. A. L. Richardson, Clerk. [155]

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*In the Circuit Court of the United States for the  
District of Idaho, Northern Division.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.  
KESTER, WILLIAM DWYER, CLAR-  
ENCE ROBNETT, FRANK W. KETTEN-  
BACH,

Defendants.

**Fourth Defense and Plea in Bar [of Messrs.  
Kettenbach, Kester and Dwyer].**

To the Honorable the Judges of the Circuit Court  
of the United States, for the District of Idaho:

Come now the defendants William F. Kettenbach,  
George H. Kester and William Dwyer, by leave of  
court first had and obtained, and file this their fur-  
ther, separate and fourth defense and plea in bar to



complainant's amended bill in equity on file herein, and respectfully represent to this Court as follows:

1.

That each and all of the conveyances made by the various entrymen to the defendants herein have been conveyed by warranty deeds or by instruments in writing, by which their title to the said tracts of land was warranted, and the defendants conveying the same to the various transferees are liable on their warranties in case the title fails, and by reason thereof, in addition to their equity of redemption in the lands held by Idaho [156] Trust Company, the defendants herein have an interest in all of the land in controversy which has been conveyed by them by reason of their warranty contained in the deeds, and conveyances made, executed and placed of record, and delivered to the various purchasers.

2.

That heretofore, on the 13th day of July, A. D. 1905, in the United States District Court within and for the Central Division, District of Idaho, in the case of The United States of America vs. Jackson O'Keefe, William Dwyer, George H. Kester and William F. Kettenbach, a Grand Jury, then in session, returned an indictment against these defendants, William F. Kettenbach, George H. Kester and William Dwyer, charging conspiracy to defraud the United States in violation of section 5440, R. S. U. S., in which indictment, and in Count One thereof, the charges against these defendants are in substance, as follows:

“That heretofore, to wit: On the 25th day of April, 1904, at the place aforesaid, Jackson O’Keefe, William Dwyer, George H. Kester and William F. Kettenbach, and other persons to the Grand Jury unknown, did falsely, unlawfully and wickedly conspire, combine, confederate and agree together among themselves to defraud the United States of the title and possession of large tracts of land situated in the County of Shoshone, and State and District of Idaho, and of great value, of which the following described land is a part, viz.: All that tract or parcel of land described as follows, to wit: Lots One and Two and the East Half of the Northwest Quarter of Section Thirty, Township Thirty-eight, North of Range Six, East of Boise Meridian, in the County of Shoshone, and State and District of Idaho, by means of false, fraudulent, untrue and illegal entries of said lands under the laws of the United States, the said lands being then and there public lands of the United States open to entry and sale under said laws of the United States at the local land office of the United States at said city of Lewiston in said State and District of Idaho. That according to and in pursuance [157]..of said conspiracy, combination, confederation and agreement among themselves had as aforesaid, and to effect the object of said conspiracy, the said Jackson O’Keefe, William Dwyer, George H. Kester and William F. Kettenbach did on said 25th day of April, 1904, at the City of Lew-

iston in the County of Nez Perce, in the State and District of Idaho, and within the jurisdiction of this court, fraudulently, unlawfully and corruptly persuade and induce one Charles W. Taylor of said District then and there being, to take his corporal oath and be then and there sworn before one J. B. West, who was then and there the duly appointed, qualified and acting Register of the United States Land Office at said City of Lewiston, in said Lewiston Land District, and who was then and there an officer and person having due and competent authority to administer said oath and who did then and there administer said oath to the said Charles W. Taylor. That a certain written affidavit and statement by him, the said Charles W. Taylor, then and there made, sworn to and subscribed, was true, which said written affidavit and statement then and there subscribed and sworn to by him, the said Charles W. Taylor, at the request and by the procurement of them, the said Jackson O'Keefe, William Dwyer, George H. Kester and William F. Kettenbach, as aforesaid, was then and there in a case in which a law of the United States authorized an oath to be administered and that said written affidavit and statement was then and there required of him, the said Charles W. Taylor, by law, and the rules and regulations of the Interior Department and the General Land Office of the United States, which said written affidavit and statement was then and



there that certain written application to the Register of the United States Land Office, at said City of Lewiston, duly made and filed by him, the said Charles W. Taylor, in the United States Land Office at said City of Lewiston, on the 25th day of April, 1904, whereby he, the said Charles W. Taylor, duly applied to the said Register of the said United States Land Office at said City of Lewiston, to enter and purchase under that certain Act of Congress approved June 3, 1878, entitled

“ ‘An Act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory,’ amended by that certain Act of Congress approved August 4, 1893, entitled: ‘An Act to authorize the entry of lands chiefly valuable for building stone under the placer mining laws,’ the land hereinbefore described, to wit: Lots One and Two and the East Half of the Northwest Quarter of Section Thirty, Township Thirty-eight North of Range Six, East of Boise Meridian, situate within the District of lands subject to entry and sale under the public land laws of the United States, at the said United States Land Office at Lewiston, Idaho, and which written affidavit and statement sworn to as aforesaid, he, the said Charles W. Taylor, and the said Jackson O’Keefe, William Dwyer, George H. Kester and William F. Kettenbach, [158] and each of them, did then and there know to be false, fraudulent and untrue. \* \* \*

Which indictment was and is numbered 605, and which indictment was then and there on the said 13th day of July, 1905, duly and regularly filed in the above-entitled court and now remains of record therein, and which indictment contains Count One, involving the entry of Charles W. Taylor and the land hereinbefore described, and Count Two thereof contains the same allegations as appear in Count One and hereinbefore pleaded, involving the entry of Edgar H. Dammarell, embracing the northwest quarter of section 19, township 38 north of range 6 E., B. M. Count Three thereof contains the same allegations as appear in Count One and involves the entry of Edgar J. Taylor, embracing Lots 3 and 4, and the east half of the southwest quarter of section 18, township 38 north of range 6 E., B. M. The Fourth Count thereof involves the entry of Joseph H. Prentice, and embraces lots 1 and 2 and the east half of the northwest quarter of section 18, township 38 north of range 6 E., B. M., and which count contains the same allegations as are contained in Count One hereof.

## 3.

## INDICTMENT NO. 607.

That heretofore, on the 13th day of July, A. D. 1905, in the District Court of the United States, within and for the Central Division of the District of Idaho, a Grand Jury duly sworn and empaneled, returned an indictment against the defendants, William Dwyer, George H. Kester and William F. Kettenbach, charging the said defendants with conspiracy to defraud the United States in violation of



section 5440, R. S. U. S., consisting of [159] Counts One, Two, and Three, which said indictment is No. 607, returned by the Grand Jury and filed by the Clerk of the above-entitled court on the said 13th day of July, 1905, and now appears on file therein, and which indictment is here referred to and made a part hereof as fully as if here set out.

That in Count One of said indictment there appears substantially the same allegation as to conspiracy, fraud, perjury and subornation of perjury as appears in the first count of Indictment No. 605, hereinbefore pleaded, set out and referred to, with the exception that the name of the entryman is Rowland A. Lambdin, and the land involved is described as southwest quarter of section 29, township 42 north of range 1 west of Boise meridian, with other land.

That in Count Two of said indictment No. 607 there appears substantially the same allegation as in Count One of Indictment No. 605, except that the name of the entryman is Fred W. Shaeffer, and the land is described as the east half of the northwest quarter and the southwest quarter of the northeast quarter, and the northwest quarter of the southeast quarter of section twenty-seven, township 40 north of range 1 west of the Boise meridian, with other land.

That in Count Three of said Indictment No. 607 there appears substantially the same allegation as in Count One of Indictment No. 605, except that the name of the entryman is given as Ivan R. Cornell, and the land involved is described as lots 6 and 7 and the east half of the southwest quarter of section



twenty-seven, township 40 north of range 1 west of Boise [160] meridian, with other lands.

4.

### INDICTMENT NO. 615.

That in the District Court of the United States, within and for the Northern Division, District of Idaho, on the 6th day of November, 1905, a Grand Jury, duly sworn and empaneled, returned an indictment against the defendants, William F. Kettenbach, George H. Kester and William Dwyer, charging these defendants with conspiracy to defraud the United States in violation of section 5440, R. S. U. S., which indictment is numbered 615, returned by the Grand Jury and filed by the clerk of the above-entitled court November 6, 1905, and now remains on file therein, which said indictment is here referred to and made a part hereof as fully as if here set out.

That said indictment contains five counts, the first thereof involving the entry of Edward M. Lewis, and in which count substantially the same allegations are made as in Count One of Indictment No. 605, with the exception that the name of the entryman is different and the land involved is described as the north half of the northeast quarter and the southwest quarter of the northeast quarter of section 19, township 39 north of range 5 east of Boise meridian, with other lands.

That in Count Two of said indictment appears substantially the same allegation as appears in Count One of Indictment No. 605, hereinbefore pleaded, except that the name of the entryman is given as

Hiram F. Lewis, and the land involved is described as the northwest quarter of section 20, township 38, north of range 5, east of Boise meridian, with other land. [161]

That in Count Three thereof substantially the same allegations are made as appear in Count One of Indictment No. 605, except that the name of the entryman is given as Charles Carey, and the land involved, with other land, is described as north half of northeast quarter, and the north half of the northwest quarter of section 15, township 38, north of range 6, East of Boise meridian.

That in Count Four thereof substantially the same allegations appear as in Count One of Indictment No. 605, except that the name of the entryman is given as Guy L. Wilson, and the land, with other lands, is described as lots 3 and 4, and the northeast quarter of the southwest quarter, and the northwest quarter of the southeast quarter, of section 19, township 39, north of range five, east of Boise meridian.

That in Count Five of said indictment appear substantially the same allegations as in Count One of Indictment No. 605, with the exception that the name of the entryman is given as Frances A. Justice, and the land, with other land, is described as lots 3 and 4, and the east half of the southwest quarter of section 19, township 38, north of range 6, east of the Boise meridian.

5.

INDICTMENT NO. 617.

That heretofore, in the United States District Court for the Northern Division, District of Idaho,



on the 6th day of November, 1905, a Grand Jury, duly and regularly empaneled and sworn, returned an indictment against the defendant William F. Kettenbach, with William B. Benton and Clarence W. Robnett, charging the defendants with the crime of conspiracy to defraud the [162] United States in violation of section 5440, R. S. U. S., which indictment is numbered 617, returned by the Grand Jury and filed by the clerk of the above-entitled court on November 6th, 1905, and now appears of record therein, which indictment is here referred to and made a part hereof as fully as if here set out.

That in said indictment appear Counts One, Two and Three, and in each of said counts there appears substantially the same allegation as appears in Count One of Indictment No. 605, except that the name of the entryman in Count One of said indictment is given as John H. Long, and the land is described as lot 2, southwest quarter of the northeast quarter, and the south half of the northwest quarter of section 24, township 39, north of range 3, east of Boise meridian, and in Count Two the name of the entryman is given as Francis M. Long and the land is described as the north half of the southwest quarter and north half of the southeast quarter of section 13, township 29, north of range 3, east of Boise meridian; and in Count Three the name of the entryman is given as Benjamin F. Long and the land is described as the south half of the northwest quarter and the south half of the northeast quarter of section 13, township 39, north of range 3 E., B. M., together with other lands.



## 6.

## INDICTMENT NO. 618.

That in the District Court of the United States within and for the District of Idaho, Northern Division, on the 6th day of November, 1905, a Grand Jury, duly and regularly empaneled and sworn, returned an indictment against two of the defendants herein, to wit: George H. [163] Kester and William F. Kettenbach, together with Fred Emery and C. W. Colby, charging the said defendants with conspiracy to defraud the United States in violation of section 5440, R. S. U. S., which said indictment is No. 618, returned by the Grand Jury, and filed by the clerk of the above-entitled court on November 6th, 1905, and now appears on file therein, which indictment is here referred to and made a part hereof as fully as if here set out.

That said indictment contains Counts One and Two, and in each of said counts appear substantially the same allegations as appear in Count One of Indictment No. 605, except that the name of the entryman in Count One thereof is given as James C. Evans, and the land is described as the south half of the northwest quarter and the west half of the southwest quarter of section 25, township, 39 north of range 3, east of Boise meridian, with other lands, and in Count Two thereof the name of the entryman is designated as Charles Dent, and the land is described as the north half of the northeast quarter, and the north half of the northwest quarter, of section 14, in township 39, north of range 3, east of Boise meridian, with other lands.

## 7.

## INDICTMENT NO. 635.

That in the United States District Court for the Central Division, District of Idaho, on the 22d day of March, 1907, a Grand Jury duly and regularly empaneled and sworn, returned an indictment against the defendants herein, together with Isham N. Smith, John B. West, and Clarence W. Robnett, charging the defendants with conspiracy to defraud the United States in violation of section 5440, R. S. U. S., which said indictment was returned by the Grand Jury and filed by the clerk of the above-entitled court March 22d, 1907, and which indictment [164] is numbered 635, now appears of record in the above-entitled court, and is made a part hereof as fully as if here set out.

That in said indictment appear substantially the same allegations as appear in Indictment No. 605, with the exception of the name of the entrymen and the description of the land. The name of the entryman given in Count One thereof is Edward M. Lewis, and the land is described as the north half of the northeast quarter and the southwest quarter of the northeast quarter of section 29, township 39, north of range 5 east of Boise meridian, and in Count Two thereof the name of the entryman is given as Hiram F. Lewis and the land is described as the northwest quarter of section 20, township 38, north of range 5, east of Boise meridian. In Count Three thereof the name of the entryman is given as Charles Carey, and the land is described as the north half of the northeast quarter and the north half of



the northwest quarter of section 15, township 38, north of range 6, east of Boise meridian, and in Count Four thereof, the name of the entryman is designated as Guy L. Wilson, and the land is described as lots 3 and 4, and the northeast quarter of the southwest quarter and the northwest quarter of the southeast quarter of section 19, township 39, north of range 5, east of Boise meridian; and in Count Five thereof the name of the entryman is given as Frances A. Justice and the land is described as lots 3 and 4, and the east half of the southwest quarter of section 19, township 38, north of range 6, east of Boise meridian, with other lands. [165]

#### INDICTMENT NO. 637.

That heretofore in the United States District Court within and for the Central Division, District of Idaho, a Grand Jury in the above-entitled court, duly and regularly empaneled and sworn, returned an indictment against the defendants, George H. Kester, William F. Kettenbach and William Dwyer, together with Isham N. Smith, John B. West, Clarence W. Robnett, John Doe and Richard Roe, whose true names are to the Grand Jurors unknown, and divers other persons whose true names are to the Grand Jurors unknown, which said indictment was returned by the Grand Jury and filed by the Clerk of said court on April 12, 1907, now appears of record therein, and is made a part hereof as fully as if here set out, which said indictment is in one count, and involves the entries of Edward M. Lewis, Hiram F. Lewis, Charles Carey, Guy L. Wilson, Frances A. Justice, Charles W. Taylor, Edgar J. Taylor, and



divers other persons whose names are alleged to be to the Grand Jurors unknown, and in which appears substantially the same allegation as appears in Count One of Indictment No. 605, and which said indictment herein referred to is No. 637, and embraces the land hereinbefore in said Indictment described.

## 9.

That to each and all of the indictments herein referred to the defendants entered their pleas of "Not Guilty," issues of fact were joined thereon, and thereafter in the United States District Court for the Northern Division, District of Idaho, at Moscow, in the County of Latah, in said District, on the 17th day of May, A. D. 1907, the defendants herein, William F. Kettenbach, George H. Kester and William Dwyer were tried on said Indictment No. 615, returned and filed November 6, 1905, [166] charging the defendants with the crime of conspiracy to defraud the United States in violation of Section 5440, R. S. U. S., in which indictment the same issues were involved as are involved in the above-entitled cause, and in which trial there was used the evidence of Rowland A. Lambdin, Fred W. Shaeffer, Ivan R. Cornell and many of the other entrymen whose claims are involved in the above-entitled cause, and in which an effort is made to have the patents set aside.

## 10.

That after a trial before the jury in said court and in said cause, the jury returned a verdict of "Not Guilty" upon Counts One, Two and Five of Indictment No. 615, which verdict is hereto attached, marked Exhibit "A," and made a part hereof as

fully as if here set out, and which was filed June 17, 1907, and now appears of record and on file in the above-entitled court.

11.

That thereafter, on the 31st day of January, 1910, the plaintiff, The United States of America, by and through its proper officers, in the causes of The United States of America, Plaintiff, vs. William F. Kettenbach, George H. Kester and William Dwyer, Indictment No. 615; and The United States of America vs. William Dwyer, George H. Kester and William F. Kettenbach, Indictment No. 607; and The United States of America vs. William Dwyer, George H. Kester, William F. Kettenbach and Jackson O'Keefe, No. 605, moved for a consolidation of said indictments, which motion is now on file in said District Court within and for the Central Division, District of Idaho, copy of which is attached hereto, marked Exhibit "B," and made a part hereof as fully as if here set out; and thereafter, on the 15th day of February, 1910, the said court made an [167] order consolidating said Indictments No. 615, No. 607 and No. 605; and thereafter the defendants moved to consolidate with Indictments No. 615, No. 607 and No. 605, Indictments numbered 617, 618, 635 and 637, herein referred to, in so far as they related to the defendants William F. Kettenbach, George H. Kester and William Dwyer, and that a severance be granted as to the remaining defendants in the several indictments; after which the United States dismissed Indictments numbered 617 and 618 as to the defendants Kettenbach and Kester, and the Court made its



order consolidating Indictments No. 635 and No. 637 with Indictments No. 615, No. 607 and No. 605.

## 12.

That after the Government had closed its case in the said trial before a jury, the defendants moved the Court to require the Government to elect upon which indictments it would rely for a conviction, and the Government elected to rely upon Indictments numbered 615, 607 and 605, as consolidated, and thereafter the defendants introduced their evidence in their defense before said jury, in said court, and after argument of respective counsel and instructions of the Court, the jury retired to consider their verdict, and thereafter returned into court a verdict of "Not Guilty," as charged in the several indictments in the above-entitled causes, exclusive of Counts One, Two and Five in case No. 615, which Counts One, Two and Five were not submitted to the jury for their consideration, for the reason that a verdict had theretofore been returned in favor of the defendants finding them not guilty upon said counts, which verdict was duly and regularly filed by the Clerk of said Court on February 26, 1910, now on file herein, and a true copy of which is [168] attached hereto, marked Exhibit "C," and made a part hereof as fully as if here set out.

## 13.

That in said several indictments the same issues are involved as are involved in the above-entitled cause, to wit: The charge of conspiracy to defraud the United States in violation of section 5440, R. S. U. S., and to acquire large tracts of public land in



violation of the timber and stone laws of the United States, by perjury, subornation of perjury and by procuring entrymen to file upon the land in violation of law, and it will be necessary to use the same evidence in support of the issues in the above-entitled cause as was used in the several criminal actions in support of the indictments on file herein; and to try the defendants upon the complainant's amended bill in equity in the above-entitled cause is, in effect, to try the defendants twice for the same offense, which is prohibited by the Constitution of the United States.

## 14.

That the Government has heretofore elected to prosecute the defendants criminally for the same and identical charges pleaded and alleged in the above-entitled cause, and having elected to rely upon a criminal prosecution for the punishment of the defendants, the complainant should not be heard or permitted to prosecute a civil action at this time for the purpose of depriving the defendants of their property, and for the purpose of trying and punishing the defendants twice for the same offense.

## 15.

That the said United States District Court within and for the District of Idaho, both for the Northern [169] and Central Divisions, had and acquired jurisdiction of each of the defendants in each of the subject matters involved herein; and had and possessed jurisdiction to hear and determine each and all of the matters in issue therein.

WHEREFORE, these defendants pray that their plea of former acquittal be held to be a bar to the

prosecution in this action, and that this action be dismissed and that they be permitted to go without day.

WILLIAM F. KETTENBACH.  
GEORGE H. KESTER.  
WILLIAM DWYER.

GEO. W. TANNAHILL,  
Solicitor for Defendants, Residing at Lewiston,  
Idaho. [170]

**Exhibit "A."**

*United States District Court, Northern Division,  
District of Idaho.*

No. 615.

THE UNITED STATES OF AMERICA,  
Plaintiff,

vs.

WILLIAM F. KETTENBACH, GEORGE H.  
KESTER and WILLIAM DWYER,  
Defendants.

**Verdict.**

We, the jury in the above-entitled cause, find the defendant William F. Kettenbach Not Guilty as charged in the first count of the indictment, and we find the defendant William F. Kettenbach Not Guilty as charged in the second count of the indictment, and we find the defendant William F. Kettenbach Guilty as charged in the third count of the indictment, and we find the defendant William F. Kettenbach Guilty as charged in the fourth count in the indictment, and we find the defendant William F. Kettenbach Not Guilty as charged in the fifth count

of the indictment, and we find the defendant George H. Kester Not Guilty as charged in the first count of the indictment, and we find the defendant George H. Kester Not Guilty as charged in the second count of the indictment, and we find the defendant George H. Kester Guilty as charged in the third count of the indictment, and we find the defendant George H. Kester Guilty as charged in the fourth count of the indictment, and we find the defendant George H. Kester Not Guilty as charged in the fifth count of the indictment, and we find the defendant William Dwyer Not Guilty as charged in the first count of the indictment, and we find the defendant William Dwyer Not Guilty as charged in the second count of the indictment, and we find the defendant William Dwyer Guilty as charged in the third count of the indictment, and we find the defendant William Dwyer Guilty as charged in the fourth count of the indictment, and we find the defendant William Dwyer Not Guilty as charged in the fifth count of the indictment.

M. D. FREEDENBERG,

Foreman of the Jury.

[Endorsed]: No. 615. In the District Court of the United States for the District of Idaho. United States of America vs. William F. Kettenbach, George H. Kester and William Dwyer. Verdict. Filed June 16, 1907. A. L. Richardson, Clerk. [171]



**Exhibit "B."**

UNITED STATES OF AMERICA.

*In the District Court of the United States for the  
District of Idaho, Central Division.*

No. 615.

UNITED STATES OF AMERICA

vs.

WILLIAM F. KETTENBACH, GEORGE H.  
KESTER and WILLIAM DWYER.

No. 607.

UNITED STATES OF AMERICA

vs.

WILLIAM DWYER, GEORGE H. KESTER and  
WILLIAM F. KETTENBACH.

No. 605.

UNITED STATES OF AMERICA

vs.

WILLIAM DWYER, GEORGE H. KESTER and  
WILLIAM F. KETTENBACH (Impleaded  
with JACKSON O'KEEFE).

NOW COMES the United States of America, by  
Peyton Gordon, Esq., special assistant to the Attor-  
ney General of the United States, and attorney for  
the plaintiff in this behalf, and MOVES the Court  
to consolidate the above-entitled causes for trial  
against George H. Kester and William F. Ketten-  
bach and William Dwyer, defendants therein named,

said motion being based upon the files and records in said causes.

PEYTON GORDON,  
Special Assistant to the Attorney General of the  
United States and Attorney for said Plaintiff.  
Boise, Idaho, January 31, 1910.

Received copy Feby. 1, 1910.

GEO. W. TANNAHILL,  
Atty. for Defts. [172]

**Exhibit "C."**

*In the District Court of the United States, District  
of Idaho, Northern Division.*

No. 615.

THE UNITED STATES

vs.

WILLIAM F. KETTENBACH, GEORGE H.  
KESTER and WILLIAM DWYER.

No. 605.

THE UNITED STATES

vs.

JACKSON O'KEEFE, WILLIAM DWYER,  
GEORGE H. KESTER and WILLIAM F.  
KETTENBACH.

No. 607.

THE UNITED STATES

vs.

WILLIAM DWYER, GEORGE H. KESTER and  
WILLIAM F. KETTENBACH.

We, the jury in the above-entitled consolidated

causes, find the defendants, William F. Kettenbach, George H. Kester and William Dwyer, not guilty as charged in the several indictments, in the above-entitled cause, exclusive of counts one, two, and five in cause numbered 615.

WM. B. ALLISON,  
Foreman.

[Endorsed]: No. 615—Consolidated. U. S. District Court, Northern Division, District of Idaho. The United States vs. William F. Kettenbach et al. Verdict. Filed Feb. 26, 1910. A. L. Richardson, Clerk.

[Endorsed]: Filed May 11th, 1910. A. L. Richardson, Clerk. [173]

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*In the Circuit Court of the United States for the District of Idaho, Northern Division.*

IN EQUITY—No. 388.

UNITED STATES OF AMERICA,  
Complainant,

vs.

WILLIAM F. KETTENBACH et al.  
Defendants.

**Order [Overruling Plea in Bar].**

Now come the defendants, and by leave of the Court are allowed to file their fourth defense and plea in bar. Thereupon, by agreement of the solicitors for complainant and defendants, the said plea was set down for argument forthwith upon its sufficiency in law to constitute a bar to a part of the bill



to which it is addressed, and upon hearing the sufficiency of said plea, it appearing to the Court that the plea is insufficient in law, it is ordered that the same be and hereby is overruled.

Dated May 11, 1910. [174]

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*In the Circuit Court of the United States for the District of Idaho, Northern Division.*

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.  
KESTER, WILLIAM DWYER, CLAR-  
ENCE W. ROBNETT, FRANK W. KET-  
TENBACH,

Defendants.

**Order [Allowing Amendment of Amended Bill].**  
**ORDER ALLOWING PLAINTIFF TO AMEND**  
**AMENDED COMPLAINT.**

A motion having been heretofore made and filed on behalf of the complainant, for an order of this Court allowing it to amend its Amended Bill of Complaint in the above-entitled cause, by interlineation as to the matter, and in the words and figures in said motion set out and described, the Court being fully advised in the premises, and the defendants to the said cause consenting to the granting of the motion, it is hereby ordered that the said complainant be, and hereby is, allowed to amend its Amended Bill of Complaint in said cause, by interlineation as to the

matter, and in the words and figures set out in said motion and stipulation.

Dated this 25th day of May, 1910.

FRANK S. DIETRICH,  
Judge.

[Endorsed]: Filed May 25, 1910. A. L. Richardson, Clerk. [175]

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*In the Circuit Court of the United States for the District of Idaho, Northern Division.*

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,  
Complainant,  
vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, WILLIAM DWYER, CLARENCE W. ROBNETT, FRANK W. KETTENBACH,

Defendants.

**Stipulation [Concerning Amendment of Amended Bill].**

It is hereby agreed and stipulated by and between the parties to the above-entitled cause that the complainant may have an order in the above-entitled Court, allowing it to amend its Amended Bill of Complaint, by interlineation in the following particulars, to wit:

After the words, "entry and purchase," on the second line from the bottom of page 9 of the said Amended Bill of Complaint, strike out the word "of."

After the words, "said Carrie D. Maris," in the last line on page 10 of said Amended Bill, by inserting the following, to wit: John H. Little, Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Bertsel H. Ferris, George R. Robinson, Chas. W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, Fred E. Justice, Edgar H. Dammarell, Benjamin F. Long. [176]

After the words, "said Carrie D. Maris," in line 2, from the top of page 15 of said Amended Bill, the following words and figures, to wit: "Did, on the 15th day of July, 1902, make her application to enter and on the 21st day of November, 1902, did make entry of, and on the 25th day of February, 1904, did," and also to strike out the words, "did make entry of and," in said line 2 from the top of page 15 immediately preceding the word "obtain."

After the words, "John H. Little did," in line 7, from the top of page 15 of said Amended Bill, the words, "on the 20th day of March, 1903, make application to enter and did."

After the words, "Ellsworth M. Harrington did," in the 12th line from the top of page 15 of said Amended Bill, the words, "on the 20th day of March, 1903, make application to enter and did."

After the words, "Wren Pierce did," in line 17, from the top of page 15 of said Amended Bill, the words and figures, "on the 21st day of March, 1903, make application to enter and did."

After the words, "Benjamin F. Bashor did," on line 12 from the bottom of page 15 of the said



Amended Bill, the following words and figures, to wit: "On the 21st day of March, 1903, make application to enter and did."

After the words, "Joseph B. Clute did," on line 7, from the bottom of page 15 of said Amended Bill, the following words and figures, to wit: On the 24th day of March, 1903, make application to enter and did." [177]

After the words, "Francis M. Long did," on the second line from the bottom of page 15 of said Amended Bill, the following words and figures, to wit: "On March 26th, 1903, make application to enter and did."

After the words, "John H. Long did," in line 3 from the top of page 16 of said Amended Bill, the following words and figures, to wit: "On March 26th, 1903, make application to enter and did."

After the words, "Benjamin F. Long did," in line 8 from the top of page 16 in said Amended Bill, the following words and figures, to wit: "On March 26th, 1903, make application to enter and did."

After the words, "Benjamin F. Long did," in line 12 from the top of page 16 of the said Amended Bill, the following words and figures, to wit: "On March 26th, 1903, make application to enter and did."

After the words, "Bertsel H. Ferris did," in line 16 from the top of page 16 of said Amended Bill, the following words and figures, to wit: "On March 31st, 1903, make application to enter and did."

After the words, "George Ray Robinson did," in line 11, from the bottom of page 16 of said Amended Bill, the following words and figures, to wit: "On

March 31st, 1903, make application to enter and did.”

After the words, “Charles W. Taylor did,” in line 6 from the bottom of page 16 of said Amended Bill, the following words and figures, to wit: “On April 25th, 1904, make application to enter and did.”  
[178]

After the words, “Jackson O’Keefe did,” in line 2 from the bottom of page 16 of said Amended Bill, the following words and figures, to wit: “On April 25th, 1904, make application to enter and did.”

After the words, “Edgar J. Taylor did,” in line 3 from the top of page 17 of said Amended Bill, the following words and figures, to wit: “On April 25th, 1904, make application to enter and did.”

After the words, “Joseph H. Prentice did,” in line 7, from the top of page 17 of said Amended Bill, the following words and figures, to wit: “On April 25th, 1904, make application to enter and did.”

After the words, “Fred W. Justice did,” in line 11, from the top of page 17 of said Amended Bill, the following words and figures, to wit: “On April 25th, 1904, make application to enter and did.”

After the words, “Edgar H. Dammarell did,” in line 7 from the bottom of page 17 of said Amended Bill, the following words and figures, to wit: “On April 25th, 1904, make application to enter and did.”

After the words, “Edgar H. Dammarell did,” in line 3, from the bottom of page 17 of said Amended Bill, the following words and figures, to wit: “On April 25th, 1904, make application to enter and did.”

## II.

It is further stipulated by and between the said



parties hereto that the answer heretofore filed by and on behalf of the defendants in the said cause to the complainant's Amended Bill of Complaint shall stand as [179] their answers to the complainant's Bill of Complaint as amended, in the particulars hereinbefore set forth in this stipulation, except that such answers so standing as aforesaid shall be amended by interlineation, by striking out the words "on" in the first line of paragraph 1, on page 20; and in the first line of paragraphs 1 and 2 on page 21, and in the first line of paragraph 1 on page 22, and by inserting in lieu thereof the words "prior to."

### III.

It is further stipulated by and between the said parties hereto that the disclaimers heretofore filed by and on behalf of the defendants, including the answer and disclaimer of Frank W. Kettenbach to the complainant's Amended Bill of Complaint in said cause, shall stand to the complainant's Bill of Complaint as amended in the particulars hereinbefore set out in this stipulation.

### IV.

It is further stipulated by and between the parties hereto that the replications heretofore filed by and on behalf of the complainant in the above-entitled cause to the answers and disclaimers of the several defendants in said cause to the complainant's Amended Bill of Complaint shall stand as the replications to the said disclaimers, and also to the answers



as amended as set forth in the second paragraph of this stipulation.

PEYTON GORDON,  
Special Assistant to the Attorney General, Solicitor  
for Complainant. [180]

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Solicitor for Defendants, William F. Kettenbach,  
George H. Kester, and William Dwyer.

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Solicitor for Frank W. Kettenbach.  
CLARENCE W. ROBNETT,  
Defendant.

[Endorsed]: Filed May 25th, 1910. A. L. Richardson, Clerk. [181]

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*In the Circuit Court of the United States for the District of Idaho, Northern Division.*

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,  
Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.  
KESTER, WILLIAM DWYER, CLARENCE  
ROBNETT and FRANK W. KETTENBACH,

Defendants.

**Motion [for Order Concerning Amendments to  
Amended Bill].**

COMES NOW the United States of America, complainant in the above-entitled cause, by Peyton Gor-

don, Special Assistant to the Attorney General, its solicitor, and by direction of George W. Wickersham, Attorney General, moves the Court for an order permitting amendments to the Amended Bill of Complaint in this cause, by interlineation, as follows, to wit:

1.

After the words, "entry and purchase," on the second line from the bottom of page 9 of the said Amended Bill of Complaint, strike out the word "of."

2.

After the words, "said Carrie D. Maris," in the last line on page 10 of said Amended Bill, by inserting the following, to wit: John H. Little, Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Bertsel H. Ferris, George R. Robinson, Chas. W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, Fred E. Justice, Edgar H. Dammarell, Benj. F. Long.

3.

After the words, "said Carrie D. Maris," in [182] line 2 from the top of page 15 of said Amended Bill, the following words and figures, to wit: "Did, on the 15th day of July, 1902, make her application to enter and on the 21st day of November, 1902, did make entry of, and on the 25th day of February, 1904, did," and also to strike out the words "did make entry of and," in said line 2 from the top of page 15 immediately preceding the word "obtain."

## 4.

After the words, "John H. Little did," in line 7 from the top of page 15 of said Amended Bill, the words "on the 20th day of March, 1903, make application to enter and did."

## 5.

After the words, "Ellsworth M. Harrington did," in the 12th line from the top of page 15 of said Amended Bill, the words, "on the 20th day of March, 1903, make application to enter and did."

## 6.

After the words, "Wren Pierce did," in line 17 from the top of page 15 of said Amended Bill, the words and figures, "on the 21st day of March, 1903, make application to enter and did."

## 7.

After the words, "Benjamin F. Bashor did," on line 12 from the bottom of page 15 of the said Amended Bill, the following words and figures, to wit: "On the 21st day of March, 1903, make application to enter and did."

## 8.

After the words, "Joseph B. Clute did," on line [183] 7 from the bottom of page 15 of said Amended Bill, the following words and figures, to wit: "On the 24th day of March, 1903, make application to enter and did."

## 9.

After the words, "Francis M. Long did," on the second line from the bottom of page 15 of said Amended Bill, the following words and figures, to wit: "On March 26th, 1903, make application to en-



ter and did.”

10.

After the words, “John H. Long did,” in line 3 from the top of page 16 of said Amended Bill, the following words and figures, to wit: “On March 26th, 1903, make application to enter and did.”

11.

After the words, “Benjamin F. Long did,” in line 8 from the top of page 16 in said Amended Bill, the following words and figures, to wit: “On March 26th, 1903, make application to enter and did.”

13.

After the words, “Benjamin F. Long did,” in line 12 from the top of page 16 of the said Amended Bill, the following words and figures, to wit: “On March 26th, 1903, make application to enter and did.”

14.

After the words, “Bertsel H. Ferris did,” in line 16 from the top of page 16 of said Amended Bill, the following words and figures, to wit: “On March 31st, 1903, make application to enter and did.” [184]

15.

After the words, “George Ray Robinson did,” in line 11, from the bottom of page 16 of said Amended Bill, the following words and figures, to wit: “On March 31st, 1903, make application to enter and did.”

16.

After the words, “Charles W. Taylor did,” in line 6 from the bottom of page 16 of said Amended Bill, the following words and figures, to wit: “On April 25th, 1904, make application to enter and did.”

## 17.

After the words, "Jackson O'Keefe did," in line 2 from the bottom of page 16 of said Amended Bill, the following words and figures, to wit: "On April 25th, 1904, make application to enter and did."

## 18.

After the words, "Edgar J. Taylor did," in line 3 from the top of page 17 of said Amended Bill, the following words and figures to wit: "On April 25th, 1904, make application to enter and did."

## 19.

After the words, "Joseph H. Prentice did" in line 7 from the top of page 17 of said Amended Bill, the following words and figures, to wit: "On April 25th, 1904, make application to enter and did."

## 20.

After the words, "Fred E. Justice did," in line 11 from the top of page 17 of said Amended Bill, the following words and figures, to wit: "On April 25th, 1904, make application to enter and did."

## 21.

After the words, "Edgar H. Dammarell did," in [185] line 7 from the bottom of page 17 of said Amended Bill, the following words and figures, to wit: "On April 25th, 1904, make application to enter and did."

## 22.

After the words, "Edgar H. Dammarell did," in line 3 from the bottom of page 17 of said Amended Bill, the following words and figures, to wit: "On

April 25th, 1904, make application to enter and did.”

PEYTON GORDON,

Special Assistant to the Attorney General,

Solicitor for Complainant.

[Endorsed]: Filed May 25th, 1910. A. L. Richardson, Clerk. [186]

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*In the Circuit Court of the United States for the  
District of Idaho, Northern Division.*

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H.  
KESTER, WILLIAM DWYER, CLAR-  
ENCE W. ROBNETT, FRANK W. KET-  
TENBACH,

Defendants.

**Stipulation [Concerning Amendment of Amended  
Bill].**

It is hereby agreed and stipulated by and between the parties to the above-entitled cause that the complainant may have an order in the above-entitled Court, allowing it to amend its Amended Bill of Complaint, by interlineation in the following particulars, to wit: [187]

After the words, “entry and purchase,” on the second line from the bottom of page 9 of the said Amended Bill of Complaint, strike out the word “of.”

After the words, “said Carrie D. Maris,” in the



last line on page 10 of said Amended Bill, by inserting the following, to wit: John H. Little, Ellsworth M. Harrington, Wren Pierce, Benjamin F. Bashor, Joseph B. Clute, Francis M. Long, John H. Long, Bertsel H. Ferris, George R. Robinson, Chas. W. Taylor, Jackson O'Keefe, Edgar J. Taylor, Joseph H. Prentice, Fred E. Justice, Edgar H. Dammarell, Benjamin F. Long.

After the words, "said Carrie D. Maris," in line 2, from the top of page 15 of said Amended Bill, the following words and figures, to wit: "did, on the 15th day of July, 1902, make her application to enter and on the 21st day of November, 1902, did make entry of, and on the 25th day of February, 1904, did," and also to strike out the words, "did make entry of and," in said line 2 from the top of page 15 immediately preceding the word "obtain."

After the words, "John H. Little did," in line 7, from the top of page 15 of said Amended Bill, the words, "on the 20th day of March, 1903, make application to enter and did."

After the words, "Ellsworth M. Harrington did," in the 12th line from the top of page 15 of, said Amended Bill, the words, "on the 20th day of March, 1903, make application to enter and did."

After the words, "Wren Pierce did," in line 17, from the top of page 15 of said Amended Bill, the words [188] and figures, "on the 21st day of March, 1903, make application to enter and did."

After the words, "Benjamin F. Bashor did," on line 12 from the bottom of page 15 of the said Amended Bill, the following words and figures, to

wit: "On the 21st day of March, 1903, make application to enter and did."

After the words, "Joseph B. Clute did," on line 7, from the bottom of page 15 of said Amended Bill, the following words and figures, to wit: "On the 24th day of March, 1903, make application to enter and did."

After the words, "Francis M. Long did," on the second line from the bottom of page 15 of said Amended Bill, the following words and figures, to wit: "On March 26th, 1903, make application to enter and did."

After the words, "John H. Long did," in line 3 from the top of page 16 of said Amended Bill, the following words and figures, to wit: "On March 26th, 1903, make application to enter and did."

After the words, "Benjamin F. Long did," in line 8 from the top of page 16 in said Amended Bill, the following words and figures, to wit: "On March 26th, 1903, make application to enter and did."

After the words, "Benjamin F. Long did," in line 12 from the top of page 16 of the said Amended Bill, the following words and figures, to wit: "On March 26th, 1903, make application to enter and did."

After the words, "Bertsel H. Ferris did," in line 16 from the top of page 16 of said Amended Bill, the following words and figures, to wit: "On March 31st, 1903 [189] make application to enter and did."

After the words, "George Ray Robinson did," in line 11, from the bottom of page 16 of said Amended Bill, the following words and figures, to wit: "On



March 31st, 1903, make application to enter and did."

After the words, "Charles W. Taylor did," in line 6 from the bottom of page 16 of said Amended Bill, the following words and figures, to wit: "On April 25th, 1904, make application to enter and did."

After the words, "Jackson O'Keefe did," in line 2 from the bottom of page 16 of said Amended Bill, the following words and figures, to wit: "On April 25th, 1904, make application to enter and did."

After the words, "Edgar J. Taylor did," in line 3 from the top of page 17 of said Amended Bill, the following words and figures, to wit: "On April 25th, 1904, make application to enter and did."

After the words, "Joseph H. Prentice did," in line 7, from the top of page 17 of said Amended Bill, the following words and figures, to wit: "On April 25th, 1904, make application to enter and did."

After the words, "Fred E. Justice did," in line 11 from the top of page 17 of said Amended Bill, the following words and figures, to wit: "On April 25th, 1904, make application to enter and did."

After the words, "Edgar H. Dammarell did," in line 7 from the bottom of page 17 of said Amended Bill, the following words and figures, to wit: "On April 25th, 1904, make application to enter and did."  
[190]

After the words, "Edgar H. Dammarell did," in line 3, from the bottom of page 17 of said Amended Bill, the following words and figures, to wit: "On April 25th, 1904, make application to enter and did."



## II.

It is further stipulated by and between the said parties hereto that the answers heretofore filed by and on behalf of the defendants in the said cause to the complainant's Amended Bill of Complaint shall stand as their answers to the complainant's Bill of Complaint *shall stand as their answers to the complainant's Bill of Complaint* as amended, in the particulars hereinbefore set forth in this stipulation, except that such answers so standing as aforesaid shall be amended by interlineation, by striking out the word "on," in the first line of paragraph 1, on page 20; and in the first line of paragraphs 1 and 2 on page 21, and in the first line of paragraph 1 on page 22, and by inserting in lieu thereof the words "prior to."

## III.

It is further stipulated by and between the said parties hereto that the disclaimers, including the answer and disclaimer of Frank Kettenbach heretofore filed by and on behalf of the defendants to the complainant's Amended Bill of Complaint in said cause, shall stand to the complainant's Bill of Complaint as amended in the particulars hereinbefore set out in this stipulation.

## IV.

It is further stipulated by and between the [191] parties hereto that the replications heretofore filed by and on behalf of the complainant in the above-entitled cause to the answers and disclaimers of the several defendants in said cause to the complainant's Amended Bill of Complaint shall stand as the repli-

cations to the said disclaimers, and also to the answers as amended as set forth in the second paragraph of this stipulation.

PEYTON GORDON,

Special Assistant to the Attorney General,  
Solicitor for Complainant.

GEO. W. TANNAHILL,

Solicitor for Defendants, William F. Kettenbach,  
George H. Kester, and William Dwyer.

JAMES E. BABB,

Solicitor for Frank W. Kettenbach.

[Endorsed]: Filed May 25th, 1910. A. L. Richardson, Clerk. [192]

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*In the Circuit Court of the United States for the  
District of Idaho.*

IN EQUITY—Nos. 388-406 and 407.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH and Others,

Defendants.

**Order [Appointing A. M. Wing Special Examiner  
to Take Testimony at Portland, Oregon].**

Upon the application of the complainant in the above-entitled causes, it is this 15th day of July, 1910, ordered, that A. M. Wing, of Portland, Oregon, be, and he is hereby appointed and constituted a Special Examiner of this Court, for the purpose of taking testimony in the said causes, and he is authorized and empowered as such Special examiner,

to take the testimony therein of such witnesses as may be offered by either party at Portland, Oregon.

FRANK S. DIETRICH,  
District Judge.

[Endorsed]: Filed July 15, 1910. A. L. Richardson, Clerk. [193]

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*In the Circuit Court of the United States for the  
District of Idaho, Northern Division.*

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,  
Complainant,  
vs.

WILLIAM F. KETTENBACH and Others,  
Defendants.

**Order [Appointing Warren Truitt a Special  
Examiner].**

The parties to this cause having requested the Court to appoint an Examiner,

It is hereby ordered that Warren Truitt, Esq., of Moscow, Idaho, be, and he hereby is appointed a Special Examiner herein to take the testimony in this cause, and to report the same to the Court with all convenient speed. His compensation for such services will be at the rate of \$10.00 per diem.

Dated July 15th, 1910.

FRANK S. DIETRICH,  
Judge.

[Endorsed]: Filed July 15, 1910. A. L. Richardson, Clerk. [194]



*In the Circuit Court of the United States for the  
District of Idaho, Northern Division.*

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH and Others,

Defendants.

**Order [Extending Time to October 15, 1910, for  
Taking of Testimony].**

Upon application of the complainant, by Peyton Gordon, Special Assistant to the Attorney General, its solicitor, and a number of the defendants, through their solicitors, George W. Tannahill and James E. Babb and C. C. Cavanaugh,

It is ordered, that the time for the taking of the testimony in the above-entitled cause be, and the same hereby is extended to and including the 15th day of October, 1910. The complainant to begin the taking of its testimony on the 22d day of August, 1910.

Dated July 15, 1910.

FRANK S. DIETRICH,

Judge.

[Endorsed]: Filed July 15, 1910. A. L. Richardson, Clerk. [195]

*In the Circuit Court of the United States for the  
District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406 and 407.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Appointing Leo Longley Special Examiner  
to Take Testimony at Los Angeles, California].**

Upon the application of the complainant in the above-entitled causes, it is this 15th day of July, 1910, ordered, that Leo Longley, of Los Angeles, California, be, and he is hereby, appointed and constituted a Special Examiner of this Court for the purpose of taking testimony in the said causes, and he is authorized and empowered as such Special Examiner to take the testimony herein of such witnesses as may be offered by either party at Los Angeles, California.

FRANK S. DIETRICH,

District Judge. [196]

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*In the Circuit Court of the United States for the  
District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406 and 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Appointing Warren Truitt a Special Examiner to Take Testimony at Spokane, Washington].**

Upon the application of complainant in the above-entitled causes, it is ordered that Warren Truitt of Moscow, Idaho, be, and he is hereby appointed and constituted a Special Examiner of this court, for the purpose of taking testimony in the said causes, and he is authorized and empowered as such Special Examiner to take the testimony therein of such witnesses as may be offered by either party at Spokane, Washington.

Dated August 20th, 1910.

FRANK S. DIETRICH,

Judge. [197]

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*In the Circuit Court of the United States, Ninth Judicial Circuit, for the District of Idaho, Northern Division.*

IN EQUITY—No. 388.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH, GEORGE H. KESTER, WILLIAM DWYER, CLARENCE ROBNETT, FRANK W. KETTENBACH,

Defendants.



**Order to Take Bill Pro Confesso Against Defendant  
Clarence Robnett.**

The subpoena in the above-entitled cause having been returned, which return has been filed, and it appearing therefrom that the said subpoena was duly served upon the defendant Clarence Robnett, and an appearance having been entered on the part of said defendant Clarence Robnett on the 7th day of April, 1910, and since said appearance no demurrer, or plea, or answer having been filed, although said pleading should have been filed before this date, therefore, on motion of Peyton Gordon, Special Assistant to the Attorney General and solicitor for complainant, it is ordered and decreed that the bill herein be taken *pro confesso* as to said defendant Clarence Robnett.

Dated this 12th day of September, A. D. 1910.

A. L. RICHARDSON,  
Clerk.

[Endorsed]: Filed Sept. 12, 1910. A. L. Richardson, Clerk. [198]

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*In the Circuit Court of the United States for the  
District of Idaho, Northern Division.*

THE UNITED STATES,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Extending Time to December 24, 1910, to  
File Complainant's Brief].**

Upon motion of counsel for the complainant herein, it is hereby ordered that the time for serving and filing the complainant's brief in cases No. 388, 406 and 407 is hereby extended to and including December 24, 1910.

Dated November 26th, 1910.

FRANK S. DIETRICH,  
Judge.

[Endorsed]: Filed November 26, 1910. A. L.  
Richardson, Clerk. [199]

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*In the Circuit Court of the United States for the  
District of Idaho, Northern Division.*

THE UNITED STATES,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Extending Time to January 15, 1911, to File  
Complainant's Brief].**

Upon motion of counsel for the complainant herein, it is hereby ordered that the time for serving and filing the complainant's brief in cases No. 388, 406, and 407, is hereby extended to and including January 15th, 1911.

Dated this 24th day of December, 1910.

FRANK S. DIETRICH,  
District Judge.

[Endorsed]: Filed December 26th, 1910. A. L. Richardson, Clerk. [200]

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*In the Circuit Court of the United States for the  
District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406 and 407.

THE UNITED STATES OF AMERICA,  
Complainant,

vs.

WILLIAM F. KETTENBACH et al.,  
Defendants.

**Order [Extending Time to February 15, 1911, to File  
Complainant's Brief].**

Upon motion of counsel for the complainant herein, it is hereby ordered that the time for serving and filing complainant's brief in the above cases is hereby extended to and including the 15th day of February, 1911.

Dated this 14th day of January, 1911.

FRANK S. DIETRICH,  
District Judge.

[Endorsed]: Filed January 14th, 1911. A. L. Richardson, Clerk. [201]



*In the Circuit Court of the United States for the  
District of Idaho, Northern Division.*

No. 388, 406, 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Extending Time to February 26, 1911, to File  
Plaintiff's Brief, etc.].**

For good cause shown, it is ordered that the time of the plaintiff for filing and serving brief is extended to and including February 26th, 1911. The defendants are given twenty days after the service thereof in which to serve and file answering briefs, and the plaintiff is given fifteen days after such service in which to reply.

Dated January 26th, 1911.

FRANK S. DIETRICH,

Judge.

[Endorsed]: Filed January 28th, 1911. A. L. Richardson, Clerk. [202]

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*In the Circuit Court of the United States for the  
District of Idaho, Northern Division.*

No. 388, 406, 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Extending Time to April 20, 1911, to File Plaintiff's Brief, etc.].**

For good cause shown, it is ordered that the time of the plaintiff for filing and serving brief in the above cases is extended to and including April 20, 1911. The defendants are given twenty days after the service thereof in which to serve and file answering briefs, and the plaintiff is given ten days after such service in which to reply.

Dated February 23d, 1911.

FRANK S. DIETRICH,

Judge.

[Endorsed]: Filed February 23, 1911. A. L. Richardson, Clerk. [203]

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*In the Circuit Court of the United States for the District of Idaho, Northern Division.*

Nos. 388, 406 and 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Extending Time to May 20, 1911, to File Complainant's Brief].**

Upon motion of counsel for the complainant herein,

It is ordered that the time for serving and filing complainant's brief in the above-entitled causes is

hereby extended to and including May 20, 1911; the defendants to have thirty days thereafter in which to serve and file answering brief, and the complainant to have ten days thereafter in which to serve and file reply brief.

Dated the 15th day of April, 1911.

FRANK S. DIETRICH,

District Judge. [204]

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*In the Circuit Court of the United States for the  
District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406 and 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WM. F. KETTENBACH et al.,

Defendants.

**Stipulation [Concerning Hearing of Motion to  
Reopen Causes, etc.].**

IT IS HEREBY AGREED by and between counsel for the respective parties in the above-entitled causes that the hearing upon a motion and notice thereon heretofore served and filed in these causes for the purpose of reopening the said causes and the taking of additional and newly discovered testimony therein may be heard at a future date by agreement of counsel, and that upon such agreement by counsel as to a date definite and specific on further notice of said hearing, said notice is waived.

IT IS FURTHER AGREED by and between the



respective parties thereto that the hearing of this motion, and if the same is granted and such additional testimony taken therein, shall in no manner interfere with the speeding of the causes or the preparation of the briefs on the testimony already taken.

It is further stipulated and agreed by and between the parties to said causes that the deposit slip set out in the affidavit served herewith, both in the [205] front and the back of the same, is in the handwriting of the defendant William F. Kettenbach, and that the same is a part of the files of the Lewiston National Bank, and that said deposit slip is now on file with the clerk of the Court in the case of U. S. vs. Kester and Kettenbach, marked Plt's. Exhibit No. 39.

Dated this 20th day of April, 1911, at Boise, Idaho.

PEYTON GORDON,

Solicitor for Complainant.

GEO. W. TANNAHILL,

Solicitor for Defendants.

J. E. BABB,

Solicitor for Certain Defendants.

[Endorsed]: Filed April 20, 1911. A. L. Richardson, Clerk. [206]

**[Motion for Order Opening Causes Nos. 388, 406 and 407 for Purpose of Including in Record Additional and Newly Discovered Evidence.]**

*In the Circuit Court of the United States for the District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406 and 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WM. F. KETTENBACH et al.,

Defendants.

**MOTION.**

Comes now Peyton Gordon, Special Assistant to the Attorney General, solicitor for the complainant in the above-entitled causes, and moves the Court for an order opening the above-entitled causes for the purpose of including in the record in said causes additional and newly discovered evidence, as based upon the affidavit hereto attached to this motion and made a part hereof.

PEYTON GORDON,

Special Assistant to Attorney General. [207]

State of Idaho,

County of Ada,—ss.

Peyton Gordon, being first duly sworn, on oath deposes and says he is Special Assistant to the Attorney General of the United States, and alleges for the complainant in the above-entitled causes, that on the 24th day of October, 1910, the testimony in the above-entitled causes was closed, and that the time for preparing and filing briefs in the same on behalf of the complainant has been extended to and

including May 20, 1911; that since the closing of said causes, new and additional testimony has been discovered, which said testimony is relevant, important and material in proving the allegations of complainant's Bills of Complaint; further, that said testimony is indispensable for the proper presentation of said causes to the Court on the allegations in said Bills as aforesaid; that said additional testimony was discovered after the closing of the taking of the testimony in said causes as aforesaid and could not with due diligence have been discovered before, and in truth and in fact the existence of such additional testimony was not known to your affiant and could not have been known with all due diligence until a date subsequent to the closing of said testimony as aforesaid; that such newly discovered testimony is of the following nature:

A deposit slip of the Lewiston National Bank, Lewiston, Idaho, which is as follows:

THE LEWISTON NATIONAL BANK,

Lewiston, Idaho.

Deposited by Kittie E. Dwyer

4-26-1904.

two checks

given to [208]

Wiggin for

cash 98.00

50

48

---

Less cash 2.00

---

96.00



and on the back of said deposit slip:

Guy Wilson	8
Greenberg	8
Bingham	8
McMillan	8
Mrs. Rowlands	8
J. O'Keefe	8
Prentice	8
E. Taylor	8
Dammarell	8
Mrs. Justice	8
C. W. Taylor	8
F. Justice	8
	<hr/>
	96
J. O'Keefe	8
	<hr/>
	88

The purpose of the introduction of this exhibit and the evidence related and incident thereto is to support the allegations of Plaintiff's Bills of Complaint and show that the defendants, Kester and Kettenbach, paid the filing fees in the land office at Lewiston, Idaho, upon the timber claims of the persons whose names are enumerated on the back thereof.

PEYTON GORDON.

Subscribed and sworn to before me this 20th day of April, 1911.

A. L. RICHARDSON,  
Clerk.

[Endorsed]: Filed April 20, 1911. A. L. Richardson, Clerk. [209]

*In the Circuit Court of the United States for the  
District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406 and 407.

UNITED STATES OF AMERICA,

Complainant,

vs.

WM. F. KETTENBACH et al.,

Defendants.

**Notice of Motion [for Opening of Causes Nos. 388,  
406 and 407].**

To the Above-named Defendants, Jas. E. Babb, Geo.  
W. Tannahill, Your Attorneys, and to Each of  
You:

YOU WILL PLEASE TAKE NOTICE that the undersigned, solicitor for complainant, will on the 26th day of April, 1911, before the above-entitled court in the Federal courtrooms, City of Boise, Idaho, at the hour of 10 o'clock A. M., or as soon thereafter as counsel can be heard, will move the Court for an order opening the above-entitled causes for the purpose of introducing additional and newly discovered testimony, in accordance with motion herewith served upon you, together with this notice. Upon the hearing of said motion, counsel will use notice of motion; the motion and the affidavit attached to said motion; all the files and records in the above-entitled causes or so much thereof as may be necessary.

PEYTON GORDON,  
Solicitor for Complainant. [210]

Service of the above notice, together with a copy of the motion and the attached affidavit thereto, acknowledged by receipt of copies this 20th day of April, 1911.

GEO. W. TANNAHILL,  
Solicitor for Defendants.

J. E. BABB,  
Solicitor for Certain Defendants.

[Endorsed]: Filed April 20th, 1911. A. L. Richardson, Clerk. [211]

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*In the Circuit Court of the United States for the District of Idaho, Northern Division.*

No. 388, 406, 407.

THE UNITED STATES OF AMERICA,  
Complainant,

vs.

WM. F. KETTENBACH et al.,  
Defendants.

**Order [Extending Time to May 27, 1911, to File Complainant's Brief, etc.].**

Upon the request of counsel for the complainant, and for cause shown,

It is hereby ordered that the complainant have until and including the 27th day of May, 1911, in which to file brief in the above cases, and that the defendants have thirty days thereafter in which to file their brief, and that the complainant have ten days there-



after in which to file reply brief.

Dated this 18th day of May, 1911.

FRANK S. DIETRICH,

Judge.

[Endorsed]: Filed May 18th, 1911. A. L. Richardson, Clerk. [212]

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*In the Circuit Court of the United States for the District of Idaho, Northern Division.*

No. 388, 406, 407.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.

**Order [Extending Time to June 3, 1911, to File Complainant's Brief, etc.].**

**ORDER EXTENDING TIME FOR SERVING AND FILING BRIEF.**

Upon motion of counsel for the complainant herein,

IT IS ORDERED that the time for serving and filing complainant's brief in the above-entitled causes is hereby extended to and including June 3, 1911; the defendants to have thirty days thereafter in which to serve and file answering brief; and the complainant to have ten days thereafter in which to serve and file reply brief.

Dated this 27th day of May, 1911.

FRANK S. DIETRICH,

District Judge.

[Endorsed]: Filed May 27th, 1911. A. L. Richardson, Clerk. [213]

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*In the Circuit Court of the United States for the District of Idaho, Central Division.*

No. 388, 406, 407.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WM. F. KETTENBACH et al.,

Defendants.

**Order [Extending Time to August 14, 1911, to File Reply Brief].**

Upon the request of counsel for the complainant in this case, it is hereby ordered that the time for serving and filing reply brief is extended to and including August 14th, 1911.

Dated this 5th day of August, 1911.

FRANK S. DIETRICH.

[Endorsed]: Filed August 7th, 1911. A. L. Richardson, Clerk. [214]

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*In the Circuit Court of the United States for the District of Idaho, Central Division.*

No. 388, 406, 407.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WM. F. KETTENBACH et al.,

Defendants.

**Order Extending Time to August 17, 1911, for  
Serving and Filing Reply Briefs.**

Upon the request of counsel for the complainant in these causes, it is hereby ordered that the time for serving and filing reply briefs is extended to and including August 17th, 1911.

Dated this 14th day of August, 1911.

FRANK S. DIETRICH,  
Judge.

[Endorsed]: Filed August 14, 1911. A. L. Richardson, Clerk. [215]

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*In the Circuit Court of the United States for the District of Idaho, Northern Division.*

IN EQUITY—Nos. 388, 406, 407.

THE UNITED STATES OF AMERICA,  
Complainant,

vs.

WILLIAM F. KETTENBACH et al.,  
Defendants.

**Specifications of Objections to Evidence.**

COME NOW the defendants herein, within the time allowed by order of the above-entitled court, and specify their objections to the evidence as follows:

1. The defendants object to a conversation with David Justice, appearing on page 10 of the Record.

2. The defendants object to a question asked the witness, Guy L. Wilson, relative to an alleged con-



versation with William Dwyer concerning questions which would be asked the witness on final proof.

3. The same objection to the same class of evidence, appearing on page 24 of the Record.

4. The objection of the defendants to the question asked the witness, Guy L. Wilson, relative to William Dwyer directing the witness in relation to taking up a timber claim, and the same objections, appearing on pages 33, 34 and 35 of the Record, relative to the final proof papers and the questions asked the witness upon the making of final proof.

5. The defendants object to each and every final proof paper offered in evidence, and to each and every question asked the witnesses concerning their final proof, and renew [216] their motions to strike out evidence relative to the final proof papers and the questions asked the witnesses upon the making of final proof, and the defendants rely upon each and every objection made to each and every paper introduced in evidence in relation to final proof.

6. The objection of the defendants to reading in evidence the questions and answers and certain evidence given by the witness, Guy L. Wilson, in a criminal case of the United States vs. William Dwyer, at the May Term, 1907, and which was read from the Case No. 1606, Transcript of Record, Volume 1, which objection appears on page 39 of the Record, and the same objection appearing on page 40 of the Record; and the same objection appearing at the bottom of page 40 of the Record, and the same objections, there being two in number, appearing on page 41 of the Record; and the same objections, there being two

in number, appearing on page 42 of the Record; the same objection, there being three in number appearing on page 43 of the Record; the same objection appearing on page 44 of the Record; the same objections, there being two in number, appearing on page 45 of the Record; and also upon the other grounds urged in the objections appearing on said page; the same objection appearing on page 46 of the Record. The objections appearing on page 47 of the Record, as irrelevant and immaterial, and the same objection appearing on page 47 of the Record as going to all of the same class of testimony.

7. The objection of the defendants to the evidence of Ella Wilson concerning questions to be asked the witness, Guy L. Wilson upon his final proof, and the objection appearing at the bottom of page 59 of the Record, [217] relative to the objection of the defendants extending to all of the same class of testimony.

8. The objection of the defendants, appearing on page 61 of the Record, as to refreshing the witness' memory, and the same objections, there being two in number, on said page 61 of the Record, and as to the same objection extending to all of the same class of testimony.

9. The objection of the defendants, appearing on page 63 of the Record, as to counsel reading from the evidence given in another case.

10. The objection of the defendants to the evidence of Ella Wilson, appearing on page 64 of the Record, as to the same being incompetent, irrelevant, immaterial and a repetition.



11. The objection of the defendants to the evidence of Ella Wilson, appearing on page 67 of the Record, as to the same being leading and suggestive.

12. The objection of the defendants appearing on page 78 of the Record, to the evidence of Fred Schafer, and to evidence in relation to matters occurring subsequent to the filing of the sworn statement and prior to the making of final proof. The same objection appearing on page 82 of the Record, and extending to all of the evidence of the same class. The same objection and motion to strike out certain parts of the witness' evidence on page 83 of the Record.

13. The objection of the defendants to the final proof papers of the witness Schafer, appearing on page 84 of the Record.

14. The objection of the defendants to the evidence of the witness, William Havernick, extending to bills 388 [218] and 407 of the Record.

15. The objection of the defendants to the evidence of the witness, William Havernick, in relation to the final proof, appearing on page 100 of the Record, and the objection of the defendants to the same evidence, appearing on the same page, as immaterial.

16. The objections of the defendants to the evidence of witness, William Havernick, appearing on page 101 of the Record, there being two in number, and especially the objection of the defendants to the final proof papers of William Havernick, appearing on page 101 of the Record.

17. The objection of the defendants, Frank W. Kettenbach and the Clearwater Timber Company, to



the final proof papers of William Havernick, appearing on page 102 of the Record.

18. The objection of the defendants to the final proof papers of Alma Havernick, appearing on page 106 of the Record.

19. The objection of the defendants to the evidence of William J. White appearing on page 111 of the Record, as to the same extending to Bills 388 and 407.

20. The objection of the defendants to the final proof papers of William J. White, appearing on pages 126 and 127 of the Record.

21. The objection of the defendants to the evidence of the witness Soren Hansen being considered in connection with Bills 388 and 407, appearing on page 133 of the Record.

22. The objection of the defendants to the evidence of the witness Soren Hansen, appearing on page 135 of the Record, and the suggestion that the same extend to all of the same class of evidence of the witness. [219]

23. The objection of the defendants to the final proof papers of the witness Soren Hansen, appearing on page 141 of the Record.

24. The objection of the defendants to the evidence of the witness, William McMillan, being considered in connection with Bills 388 and 407, appearing on page 147 of the Record.

25. The objection of the defendants to the questions asked the witness, McMillan, relative to his final proof, appearing on page 154 of the Record.

26. The objection of the defendants to the final

proof papers of William McMillan, appearing on page 159 of the Record.

27. The objection of the defendants to the evidence of Charles Carey, appearing on page 162 of the Record, upon the ground that the witness' claim is not involved. Same objection appearing on page 163 of the Record.

28. The objection of the defendants to the cross-examination by the complainant of the witness, Charles Carey, appearing on page 170 of the Record.

29. The objection of the defendants to the evidence of the witness in relation to the witness' final proof, appearing on page — of the Record.

30. The objection of the defendants to the final proof papers of the witness, Charles Carey, appearing on page 181 of the Record.

31. The objection of the defendants to the final proof papers of the witness, Mamie P. White, appearing on page 204 of the Record.

32. The objection of the defendants to the evidence of the witness, Charles Myers, being considered in relation to Bills 406 and 388, appearing on page 207 of [220] the Record.

33. The objection of the defendants to the question asked the witness, Charles Myers, in relation to the money for final proof, appearing on page 212 of the Record.

34. The objection of the defendants to the final proof papers of the witness, Charles Myers, appearing on page 216 of the Record.

35. The objection of the defendants to the evidence of the witness, Mrs. Janey Myers, appearing

on page 223 of the Record; that is, as to it being considered in relation to Bills 388 and 407.

36. The objection of the defendants to the final proof papers of Janey Myers, appearing on page 230 and 231 of the Record.

37. The objection of the defendants to the questions asked the witness, Joel H. Benton, relative to his homestead claim, appearing on page 237 of the record, and the objection of the defendants to the evidence of the witness being considered in relation to Bills 388 and 407, appearing on pages 236 and 237 of the Record. The same objection to all of the same class of evidence, appearing on page 248 of the Record.

38. The objection of the defendants to the examination of the witness upon evidence given upon a former trial, appearing on page 241 of the Record.

39. The objection of the defendants to a question asked the witness, Joel H. Benton, appearing on page 253 of the Record.

40. The objection of the defendants to the final proof papers of Joel H. Benton, appearing on page 258 of the [221] Record.

41. The objection of the defendants to the final proof papers of Frederick W. D. Newman, appearing on pages 284 and 285 of the Record.

42. The objection of the defendants to the final proof papers of Daniel W. Greenburg, appearing on page 302 of the Record.

43. The objection of the defendants to the evidence of Charles Dent, being considered in relation



to Bills 388 and 407, appearing on page 305 of the Record.

44. The objection of the defendants to the final proof papers of the witness, Charles Dent, appearing on pages 320 and 321 of the Record.

45. The objection of the defendants to the final proof papers of the witness, Edna P. Kester, appearing on page 327 of the Record.

46. The objection of the defendants to the evidence of the witness, Elizabeth White, appearing on page 330 of the Record, especially in relation to Bills 388 and 407.

47. The objection of the defendants to the final proof papers of the witness, Elizabeth White, appearing on page 352 of the Record.

48. The objection of the defendants to the evidence of Van V. Robinson, being considered in support of Bills 388 and 407, appearing on page 356 of the Record.

49. The objection of the defendants to the final proof papers of Van V. Robinson, appearing on page 369 of the Record.

50. The objection of the defendants to the evidence of the witness Frank J. Bonney, and so far as the same relates to Bills 388 and 406, appearing on page 374 of [222] the Record.

51. The objection of the defendants to the final proof papers of the witness, Frank J. Bonney, appearing on page 388 of the Record.

52. The objection of the defendants to the evidence of the witness Clinton E. Perkins, appearing on page 393 of the Record, and as the same relates

to Bills 406 and 388.

53. The objection of the defendants to the final proof papers of Clinton E. Perkins, appearing on page 407 of the Record.

54. The objection of the defendants to the evidence of the witness, Francis A. Clausen, being considered in support of Bills 388 and 407, appearing on page 419 of the Record.

55. The objection of the defendants to the final proof papers of the witness, Francis A. Clausen, appearing on page 432 of the Record.

56. The objection of the defendants to the evidence of Gary Van Artsdalen being considered in support of Bills 407 and 388, appearing on page 435 of the Record.

57. The objection of the defendants to the final proof papers of the witness Gary Van Artsdalen, appearing on page 442 of the Record.

58. The objection of the defendants to the evidence of the witness, Bertsel H. Ferris, appearing on page 444 of the Record.

59. The objection of the defendants to the evidence of the witness, Bertsel H. Ferris, appearing on page 451 of the Record. [223]

60. The objection of the defendants to all of the evidence of Bertsel H. Ferris relating to final proof, appearing on page 456 of the Record, and also the defendants' objection appearing on said page to the evidence of the witness on the ground of its being immaterial.

61. The objection of the defendants to the final proof papers of the witness Bertsel H. Ferris,

appearing on page 463 of the Record.

62. The objection of the defendants to the evidence of the witness Hiram F. Lewis, appearing on page 415, the claim not being involved in either of the actions.

63. The objection of the defendants to the evidence of the witness Albert J. Flood, appearing on page 557 of the Record.

64. The motion of the defendants to strike out the evidence of the witness, Albert J. Flood, appearing on page 569 of the Record, and the renewal of that motion appearing on page 570 of the Record.

65. The objection of the defendants to the evidence of the witness Walter Williams, appearing on page 573 of the Record.

66. The objection of the defendants to the evidence of the witness John E. Nelson in support of Bills 388 and 407, appearing on page 585 of the Record. And the defendants' objections on the grounds of materiality and hearsay at the bottom of page 585 of the Record.

67. The objection of the defendants to the final proof papers of John E. Nelson, appearing on page 597 of the Record.

68. The defendants' objection to the evidence of the [224] witness, Charles W. Taylor, appearing on page 603 of the Record, and especially in relation to Bills 406 and 407.

69. The objections of the defendants to the final proof papers of the witness, Charles W. Taylor, appearing on page 622 of the Record.

70. The objections of the defendants to the evi-



dence of the witness, Edgar J. Taylor, appearing on page 656 of the Record. And the same objections appearing on page 657, there being three in number on said page 657.

71. The objection of the defendants to the final proof papers of the witness Edgar J. Taylor, appearing on page 667 of the Record.

72. The objection of the defendants to the evidence of the witness David S. Bingham, in support of Bills 388 and 407, appearing on page 674 of the Record.

73. The objection of the defendants to the evidence of the witness David S. Bingham, as to the witness' understanding, and also the defendants' objection to the conversation of the witness with Jackson O'Keefe, appearing on page 675 of the Record; and the objection of the defendants to the question asked the witness, David S. Bingham, as to the same being a conclusion; and the motion of the defendants to strike out the evidence of the witness, David S. Bingham, appearing on page 676 of the Record.

74. The objection of the defendants to conversations of the witness, David S. Bingham, with Jackson O'Keefe and others, not in the presence of the defendants, appearing on page 682 of the Record.

75. The objection of the defendants to the deed executed by the witness, David S. Bingham, and so far as [225] relates to Bills 388 and 407, appearing on page 685 of the Record.

76. The objections of the defendants to the final proof papers of David S. Bingham, appearing on

page 687 of the Record.

77. The objection of the defendants to the evidence of the witness, Edgar H. Dammarell, in so far as it relates to Bills 406 and 407, appearing on page 701 of the Record.

78. The objection of the defendants to the conversations of the witness with Jackson O'Keefe not in the presence of the defendants, appearing on page 702 of the Record; especially, inasmuch as Jackson O'Keefe was at the time the witness was testifying, and for a long time prior to the trial, deceased.

79. The objection of the defendants to the final proof papers of the witness, Edgar H. Dammarell, appearing on page 721 of the Record.

80. The objection of the defendants to the evidence of the witness, Samuel C. Hutchins, as the witness' entry was not involved in either of the Bills, appearing on page 727 of the Record.

81. The objection of the defendants to the evidence of the witness, Wynn. W. Peffley, as the witness' entry was not involved in either of the bills, the objection appearing on page 731 of the Record.

82. The objection of the defendants to the evidence of the witness, John P. Shaw, as the witness' entry was not involved in either of the bills, the objection appearing on page 735 of the Record. The same objection appearing on page 736 of the Record.

83. The objection of the defendants to the evidence [226] of the witness, Andrew J. Sherburn, as the witness' entry was not involved in either of the Bills, the objection appearing on page 740 of the Record.



84. The objection of the defendants to the evidence of the witness, F. D. Morrison, appearing on page 743 of the Record,—no entry of the witness being involved in either of the Bills.

85. The objection of the defendants to the evidence of the witness, Joseph H. Prentice, in support of Bills 406 and 407, and the objection of the defendants to the conversations with Jackson O'Keefe, who was at the time the witness was testifying, deceased,—said objection appearing on page 750 of the Record. The same objection to all of the evidence of the witness as to conversations with Jackson O'Keefe, appearing on page 750 of the Record.

86. The objection of the defendants to the final proof papers of the witness, Joseph H. Prentice, appearing on page 767 of the Record.

87. The objection of the defendants to the final proof papers of the witness, John H. Long, appearing on page 791 of the Record.

88. The objection of the defendants to the evidence of the witness, Frances M. Long, as the same relates to Bills 406 and 407, appearing on page 794 of the Record.

89. The objection of the defendants to the final proof papers of the witness, Frances M. Long, and Annie E. Long, appearing on page 807 of the Record, and the same objection appearing at the bottom of page 807 of the Record.

90. The objection of the defendants to the evidence of the witness, Benjamin F. Long, admitted in support [227] of Bills 406 and 407, appearing on page 825 of the Record.



91. The objection of the defendants to the final proof papers offered in evidence of the witness Benjamin F. Long, appearing on page 825 of the Record.

92. The objection of the defendants to the evidence of the witness, George J. Robinson, being admitted in support of Bills 406 and 407, appearing on page 830 of the Record.

93. The objection of the defendants to the final proof papers of George J. Robinson, appearing on page 844 of the Record.

94. The objection of the defendants to the evidence of the witness, Ellsworth M. Harrington, being admitted in support of Bills 406 and 407, appearing on page 856 of the Record.

95. The objection of the defendants to the final proof papers of the witness, Ellsworth M. Harrington, appearing on page 868 of the Record.

96. The objection of the defendants to the affidavit offered in evidence by the complainant, of Frances A. Clausen, which objection appears on page 909 of the Record.

97. The objection of the defendants to the final proof papers of the witness, Frances A. Clausen, appearing on page 921 of the Record.

98. The objection of the defendants to the final proof papers of Jackson O'Keefe, appearing on page 922 of the Record.

99. The objection of the defendants to the final proof papers of Joseph B. Clute, appearing on page 923 of the Record. [228]

100. The objection of the defendants to the final

proof papers of William E. Helkenberg, appearing on page 924 of the Record.

101. The objection of the defendants to the final proof papers of Wren Pierce, appearing on page 926 of the Record.

102. The objection of the defendants to the reading into the Record of the evidence of Norman Jackson, appearing on page 927 of the Record.

103. The objection of the defendants to the evidence of Norman Jackson, made at the time the witness was testifying in a former trial, appearing on page 930 of the Record.

104. The objection of the defendants to the final proof papers of William H. Kincaid, appearing on page 936 of the Record.

105. The objection of the defendants to the final proof papers of George W. Miller, appearing on page 937 of the Record.

106. The objection of the defendants to the final proof papers of Charles F. Schumaker, appearing on page 938 of the Record.

107. The objection of the defendants to the final proof papers of Charles B. Thomberg, appearing on page 939 of the Record.

108. The objection of the defendants to the final proof papers of Charles S. Myers, appearing on page 939 of the Record.

109. The objection of the defendants to the final proof papers of Charles G. Vogelmann and of Frank L. Moore, appearing on page 940 of the Record.

110. The objection of the defendants to the evidence in relation to the contest of William Dwyer



of the entry [229] of Albert O. Wasson, appearing at page 940 of the Record; and the objection of the defendants to the filing of Homestead Entry of William B. Walker, at page 940 of the Record; and the objection of the defendants to the filing of Homestead Entry of William B. Walker, at page 940 of the Record.

111. The objection of the defendants to the evidence in relation to the Homestead Entry of Walter Williams, appearing at page 941 of the Record.

112. The objection of the defendants to the evidence of the Homestead Entry and Contest of Albert J. Flood, appearing on page 942 of the Record.

113. The objection of the defendants to the Homestead Entry and Contest of John P. Harlan, appearing on page 943 of the Record; also of John W. Huber. The same objection as to the evidence in relation to the homestead entry of William R. Lawrence and Fred H. McConnell, appearing on page 944 of the Record. The same objection as to the homestead entry and contest of Frank A. McConnell, appearing on page 945 of the Record. The same objection as to the evidence of the homestead entry and contest of Albert Anderson and George G. James, at page 946 of the Record. The same objection as to the evidence of the homestead entry and the contest of the same of John McHardie and Carl Rogers, appearing on page 948 of the Record. The same objection as to the homestead entry and contest of Frank Lillegren, appearing on page 950 of the Record. The same objection as to the evidence in relation to the entry of Susan Comstock, appearing



on page 952 of the Record. [230]

114. The objection of the defendants to the evidence of Miss Elizabeth Kettenbach, in so far as the same relates to Bills 388 and 407, appearing on page 1049 of the Record.

115. The objection of the defendants to the final proof papers of Miss Elizabeth Kettenbach, appearing on page 1065 of the Record.

116. The objection of the defendants to the evidence of the witness, Martha E. Hallett, in so far as the same relates to Bills 388 and 407, appearing on page 1080 of the Record.

117. The objection of the defendants to the final proof papers of the witness, Martha E. Hallett, appearing on page 1091 of the Record.

118. The objection of the defendants to the evidence of John H. Little, in so far as the same relates to Bills 406 and 407, appearing on page 1094 of the Record.

119. The motion of the defendants to strike out certain portions of the evidence of the witness, John H. Little, appearing on page 1096 of the Record.

120. The objection of the defendants to the evidence of the witness, John H. Little, in relation to final proof, appearing on page 1101 of the Record.

121. The objection of the defendants to the final proof papers of the witness, John H. Little, appearing on page 1104 of the Record.

122. The objection of the defendants to the evidence of the witness, E. N. Brown, appearing on page 1109 of the Record.

123. The objections of the defendants to the evi-

dence of E. N. Brown, and motion to strike the same, there being three objections in number, appearing on page 1111 of the [231] Record.

124. The objections of the defendants to the evidence of the witness, E. N. Brown, appearing on page 1111 of the Record.

125. The objection of the defendants to Receiver's Final Receipt issued to the witness, Bertsel H. Ferris, appearing on page 1155 of the Record.

126. The objection of the defendants to the final proof papers of the witness, ——— Roland, appearing on page 1156 of the Record.

127. The objection of the defendants to the final proof papers of the witness William B. Benton, appearing on page 1157 of the Record. The same objection to the final proof papers of the witness, Benjamin F. Bashor, appearing on page 1158 of the Record. The same objection to the admission in evidence of the final proof papers of Pearl Washburn, appearing on page 1159 of the Record. The same objection to the final proof papers of the witness, James C. Evans, appearing on page 1160 of the Record. The same objection to the final proof papers of the witness, George Morrison, appearing on page 1162 of the Record. The same objection to the final proof papers of Edwin M. Hyde, appearing on page 1163 of the Record. The same objection to the final proof papers of the witness, Robert O. Waldman, appearing on page 1164 of the Record.

128. The objection of the defendants to the evidence of the witness, Harvey J. Steffey, appearing



on page 1224 of the Record, especially in so far as the same relates to Bills 388 and 406.

129. The motion of the defendants to strike out certain evidence of the witness, Harvey J. Steffey, relative to the claim of Winnie Lane, the claim not being [232] involved in the action, appearing on page 1225 of the Record. The same objection to the evidence in relation to the Kenner claim, appearing on page 1227 of the Record.

130. The objection of the defendants appearing on page 1243 of the Record, so far as the same relates to Bills 388 and 406, the same being a check marked "Exhibit 55."

131. The objection of the defendants to the statement of the witness, appearing on page 1247 of the Record, as being a conclusion.

132. The objection of the defendants to evidence in relation to a question, appearing on page 1251 of the Record, as not being the best evidence.

133. The motion of the defendants to strike out the statement of the witness relative to an understanding, appearing on page 1258 of the Record.

134. The motion of the defendants to strike out the statement of the witness, appearing on page 1259 of the Record, as to an understanding.

135. The motion of the defendants to strike out a statement of the witness as to what an understanding was, appearing on page 1271 of the Record.

136. The objection of the defendants to the admission of certain checks in evidence, appearing on page 1276 of the Record.

137. The objection and motion of defendants to



strike out a certain statement of the witness, appearing on page 1279 of the Record, and also two similar objections and motions, appearing on the same page. [233]

138. The objection of the defendants to reports of the Lewiston National Bank, appearing on page 1445 of the Record, and the same objection appearing on page 1446 of the Record, and the same objection appearing on page 1447 of the Record; and the same objection as to relevancy and materiality, appearing on page 1449 of the Record; and also the objection appearing at the bottom of page 1449 relative to a certain note of Naylor and Norlin not appearing in the Bills Receivable.

139. The objection of the defendants to a note of Naylor and Norlin and guaranteed by George H. Kester, appearing on page 1450 of the Record.

140. The objection of the defendants to the evidence of the witness, Joseph M. Molloy, relative to a line-up at the land office, appearing at page 1460 of the Record, and also that the same objection extend to all of the same line of inquiry.

141. The objections of the defendants to the evidence of the witness, Edward M. Lewis, upon the ground that the entry of the witness was not involved in any of the Bills, the same being two in number, appearing at page 1487 of the Record.

142. The objection of the defendants to conversations between the witness and his brother, Hiram F. Lewis, not in the presence of the defendants, appearing at page 1488 of the Record.

143. The objection of the defendants to the offer

in evidence relative to an affidavit made by the witness, Edward M. Lewis, for Inspector O'Fallon, appearing on page 1497 of the Record. Same objection on page 1498 of the Record.

144. The objection of the defendants to a deed made [234] by Carrie D. Rexford, and to final proof papers of the witness, Carrie D. Rexford, appearing on page 1424 of the Record.

145. The objection of the defendants to the final proof papers of Benjamin F. Bashor, appearing on page 1536 of the Record.

146. The objection of the defendants to the final proof papers of Drury M. Gammon, appearing on page 1540 of the Record.

147. The objection of the defendants to certain plats identified by the witness, M. J. Dowd, appearing on page 1564 of the Record.

148. The objection of the defendants to certain evidence offered by the witness, Harvey J. Martin, appearing on page 1579 of the Record.

149. The objection of the defendants to the final proof papers of the witness, Roland A. Lambdin, offered in evidence, appearing on page 1591 of the Record.

150. The objection of the defendants to certain evidence of the witness, Clarence W. Robnett, as leading and suggestive, appearing on page 1633 of the Record. Same objections, there being two in number, appearing on page 1636 of the Record. Same objection on page 1637 of the Record. Same objection appearing on page 1641 of the Record. Same objections, there being two in number, appear-



ing on page 1647 of the Record. And the same objection to all of the same class of testimony, appearing on page 1644 of the Record, and there being two in number. Same objection appearing on page 1649 of the Record. Same objection as to materiality and relevancy, appearing on page 1653 of the record.

151. The motion of the defendants to strike out all [235] of the evidence of the witness relative to contests by the defendants, William Dwyer, appearing on page 1660 of the Record.

152. Objection of the defendants to the evidence of the witness, Clarence W. Robnett, upon the ground of materiality and relevancy, appearing on page 1669 of the Record.

153. The objection of the defendants to the evidence of the witness, Francis M. Goodwin, upon the ground that it was irrelevant and immaterial, appearing upon page 1664 of the Record.

154. The objection of the defendants to an affidavit of Roland A. Lambdin, marked Plaintiff's Exhibit 96 for Identification, appearing upon page 1676 of the Record.

155. The objection of the defendants to a question asked the witness, Francis M. Goodwin, relative to looking through the rooms of Francis A. Clausen, appearing upon page 1683 of the Record.

156. The objections of the defendants to a certain question asked the witness, Francis M. Goodwin, there being two in number, and upon the ground that the same is immaterial and irrelevant, and also leading and suggestive, appearing upon page 1684



of the Record. Same objection appearing upon page 1685 of the Record.

157. The objection of the defendants to Mr. Gordon coaching and directing the witness, Clarence W. Robnett, appearing upon page 1690 of the Record. Same objections, there being four in number, appearing upon page 1691 of the Record.

158. The objection of the defendants to the evidence of Clarence W. Robnett, concerning the final proof, appearing on page 1693 of the Record.

159. The objection of the defendants to a question asked [236] the witness, Clarence W. Robnett, as being leading and suggestive, appearing on page 1696 of the Record. Similar objection appearing on page 1698 of the Record.

160. The objection of the defendants to the evidence of Clarence W. Robnett, appearing on page 2012 of the Record, as leading and suggestive.

161. The objection of the defendants to the evidence of James T. Jolly, in so far as it relates to Bills 388 and 406, appearing on page 2028 of the Record, and the stipulation that the same objection shall be considered as applying to all of the evidence without repetition.

162. The objection of the defendants to the question propounded to the witness, James T. Jolly, appearing on page 2029 of the Record, as a conclusion, and referring to the assembling of timber claims by locating people upon them.

163. The objections of the defendants to the question propounded to the witness, James T. Jolly, as leading and suggestive, appearing on page 2038 of

the Record, being two objections in number, on the same page, and two similar objections appearing on page 2041 of the Record.

164. The objection of the defendants to the final proof papers of the witness, James T. Jolly, appearing on page 2043 of the Record.

165. The objections of the defendants to certain questions asked the witness, James T. Jolly, on re-direct examination, there being two in number, one at the top of the page, upon the ground that the same was a repetition, and relating to an understanding between the witness, Steffey, and other people, appearing on page 2055 of the Record.

166. The objection of the defendants to the evidence of the witness, Effie A. Jolly, as the same applies to Bills 388 and 406 appearing on page 2059 of the Record. [237]

167. The objection of the defendants to the final proof papers of Effie A. Jolly, appearing on page 2072 of the Record.

168. The objection of the defendants to the evidence of Mrs. Mary A. Loney, as the same relates to Bills 388 and 406, appearing on page 2082 of the Record.

169. The motion of the defendants to strike out the answer of the witness, Mary A. Loney, the same being hearsay, appearing on page 2086 of the Record.

170. The two objections of the defendants, appearing on page 2095 of the Record, upon the ground that the questions were leading and suggestive.

171. The four similar objections of the defendants, appearing on page 2096 of the Record, and five



similar objections, appearing on page 2097 of the Record, and three similar objections, appearing on page 2098 of the Record.

172. The objection of the defendants to the final proof papers of the witness, Mary A. Loney, appearing on page 2099 of the Record.

173. The objection of the defendants to the evidence of Charles E. Loney, as the same applies to Bills 388 and 406, appearing on page 2106 of the Record.

174. The objection of the defendants to a question asked the witness, Charles A. Loney, appearing on page 2110 of the Record, and two similar objections appearing on page 2111 of the Record, and the motion to strike out an answer of the witness, appearing on the same page.

175. The objection of the defendants to a question calling for the understanding of the witness, appearing on page 2119 of the Record; and the same objection appearing about the center of page 2119, upon the ground that the same was leading and suggestive.

176. The objection of the defendants to the final proof [238] papers of Charles E. Loney, appearing on page 2120 of the Record.

177. The motion of the defendants to strike out an answer of the witness, John E. Chapman, appearing on page 2131 of the Record, and the objection to the next question as calling for a conclusion, appearing on the same page.

178. The motion of the defendants to strike out certain evidence of the witness, John E. Chapman,



appearing on page 2138 of the Record.

179. The motion of the defendants to strike out certain evidence of the witness, John E. Chapman, appearing on page 2147 of the Record.

180. The objection of the defendants to the evidence of the witness, Ivan R. Cornell, as the same relates to Bills 388 and 407, appearing on page 2157 of the Record.

181. The objection of the defendants to the witness testifying to an idea he had, appearing on page 2160 of the Record.

182. The objection of the defendants to a question propounded to the witness, Ivan R. Cornell, relative to his final proof, appearing on pages 2169 and 2170 of the Record.

183. The objection of the defendants to a question propounded to the witness, Ivan R. Cornell, upon the ground that the same is irrelevant and immaterial, appearing on page 2179 of the Record.

184. The objection of the defendants to the final proof papers of Ivan R. Cornell, appearing on page 2181 of the Record.

185. The objection of the defendants to certain documents offered in evidence by the complainant, the same being the original selection No. 6, Charitable Institutions, filed in the United States Land Office at [239] Lewiston, Idaho, April 21st, 1904, which was subsequently withdrawn, the objection appearing on page 2217 of the Record. The same objections to the same class of evidence appearing on page 2220 of the Record. The same objection to the same class of evidence, and especially certain

letters introduced in evidence, appearing on page 2233 of the Record. The same objection to the same class of evidence, appearing on page 2235 of the Record. The same objection to the same class of evidence appearing on page 2238 of the Record. The same objection to the same class of evidence, appearing on page 2256 of the Record. The same objection to the same class of evidence, appearing on page 2278 of the Record. The same objection to the same class of evidence, appearing on page 2280 of the Record. The same objection to the same class of evidence, appearing on page 2282 of the Record. The same objection to the same class of evidence, appearing on page 2291 of the Record. The same objection to the same class of evidence, appearing on page 2298 of the Record. The same objection to the same class of evidence, appearing on page 2300 of the Record. The same objection to the same class of evidence, appearing on page 2301 of the Record. The same objection to the same class of evidence, appearing on page 2302 of the Record. The same objection to the same class of evidence appearing on page 2303 of the Record. The same objection to the judgment of conviction entered against William Dwyer, appearing on page 2305 of the Record, and a similar objection to Complainant's Exhibit 107 and Complainant's Exhibit 108, appearing on page 2305 of the Record, and a similar objection to the petition of Frank W. Kettenbach for a change of venue, which objection appears on page 2306 of the Record. [240]

186. The objection of the defendants to a ques-



tion propounded to the witness, Harvey J. Steffey, appearing on page 2307 of the Record.

187. The objection of the defendants to all of the evidence of like nature, appearing on page 2308 of the Record.

188. The motion of the defendants to strike out certain evidence of the witness, Harvey J. Steffey, appearing on page 2308 of the Record.

189. The objection of the defendants and motion to strike out certain evidence of the witness, Harvey J. Steffey, appearing on page 2309 of the Record, and a similar objection to a question relative to the entry of Margaret Goldsmith, appearing on page 2309 of the Record.

190. The motion of the defendants to strike out certain evidence of the witness, Harvey J. Steffey, appearing on page 2310 of the Record.

191. The objection of the defendants to a question propounded to the witness, Harvey J. Steffey, as being leading and suggestive, appearing on page 2312 of the Record.

192. The objection of the defendants to a question propounded to the witness, Harvey J. Steffey, appearing on page 2313 of the Record.

193. The defendants' objection to a question propounded to the witness, Harvey J. Steffey, as being irrelevant and immaterial, appearing on page 2317 of the Record.

194. The objection of the defendants to the evidence of the witness, Lon E. Bishop, as the same applies to Bills 388 and 407, appearing on page 2320 of the Record.



195. The objection of the defendants to the evidence of the witness, Lon E. Bishop, as being incompetent, irrelevant and immaterial, appearing on page 2322 of the Record, and a similar objection appearing on page 2323 of the Record.

196. The objection of the defendants to the final proof papers of Lon E. Bishop appearing on page 2332 of the Record.

197. The objection of the defendants to the evidence [241] of Charles Smith, as the same applies to Bills 388 and 407, appearing on page 2338 of the Record.

198. The objection of the defendants to the final proof papers of Charles Smith, appearing on page 2356 of the Record.

199. The objection of the defendants to certain evidence of Thomas H. Bartlett, appearing on page 2361 of the Record, on the ground that it is irrelevant and immaterial.

200. The objection of the defendants to the evidence of Thomas H. Bartlett, as irrelevant and immaterial, the entry not being involved in the action, appearing on page 2364 of the Record. A similar objection, there being two in number, appearing on page 2365 of the Record. A similar objection, there being two in number, appearing on page 2366 of the Record. A similar objection, there being two in number, appearing on page 2367 of the Record. A similar objection, appearing on page 2368 of the Record.

201. The objections of the defendants, there being three in number, to the evidence of the witness,

J. C. Jansen, as to the competency, relevancy and materiality of the witness' evidence, appearing on page 2370 of the Record. A similar objection, appearing on page 2371 of the Record. A similar objection, appearing on page 2372 of the Record. A similar objection, appearing on page 2374 of the Record, there being three in number. A similar objection, there being three in number, appearing on page 2375 of the Record.

202. The motion of the defendants for a nonsuit after the close of the complainant's case, appearing on page 2388 of the Record. [242]

203. The objection of the defendants to a question asked the witness, J. C. Jansen, on direct examination, appearing at page 2903 of the Record, the objection being that the evidence is irrelevant, incompetent and immaterial; and two similar objections appearing on page 2904 of the Record.

204. The objection of the defendants to a question asked the witness, J. C. Jansen, upon the ground that the evidence was irrelevant, incompetent and immaterial, and not proper rebuttal testimony.

205. The objection of the defendants to a question asked the witness, J. C. Jansen, on rebuttal, at page 2906 of the Record, on the ground that the same was immaterial, and the witness not being competent to answer. Same objection on page 2907 of the Record.

206. The objection of the defendants to the admission in evidence of certain land office records, appearing on page 2925 of the Record.

207. The objection of the defendants to re-opening the case for the admission of further evidence after the same had been closed, appearing on page 2970 of the Record.

208. The objection of the defendants to the admission in evidence of certain documentary evidence, appearing at page 2976 of the Record.

209. The objection of the defendants to the admission in evidence of Complainant's Exhibit 120, appearing at page 2978 of the Record.

Most respectfully submitted,

GEO. W. TANNAHILL,

Attorney for Defendants, Residing at Lewiston,  
Idaho.

[Endorsed]: Filed November 30, 1911. A. L.  
Richardson, Clerk. [243]

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[Opinion.]

*In the District Court of the United States for the  
District of Idaho, Central Division.*

IN EQUITY—Nos. 388—406—407.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH et al.,

Defendants.



March 21, 1912.

Appearances:

PEYTON GORDON, Special Assistant to the Attorney General, for Complainant.

JAMES E. BABB, for Lewiston National Bank, Idaho Trust Company, Potlatch Lumber Company, Clearwater Timber Company, and Frank W. Kettenbach.

GEO. W. TANNAHILL, for William F. Kettenbach, George H. Kester, William Dwyer, Elizabeth White, Edna P. Kester, Martha E. Hallett, and Kittie E. Dwyer.

MORGAN & MORGAN, for Western Land Company.

EUGENE A. COX, for Elizabeth Kettenbach, Curtis Thatcher, Elizabeth W. Thatcher, and Elizabeth White.

DIETRICH, District Judge:

Each of the three above-entitled cases, numbered 388, 406 and 407, has been brought by the United States against William F. Kettenbach, George H. Kester, and William Dwyer, and other parties, to set aside patents to lands acquired under the provisions of what is popularly known as the Timber [244\*—1†] and Stone Act, approved June 3, 1887 (20 Stat. 89), as amended to extend to all public land states by the Act of August 4, 1892. In No. 388 seventeen different patents are attacked; in No. 406, thirty-seven, and in No. 407, eight. As outlined in the bills of

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\*Page-number of Original Certified Transcript of Record.

†Original page-number of Opinion as same appears in Original Certified Transcript of Record.

complaint, the theory of the Government is that the defendants Kettenbach, Kester and Dwyer, about the year 1901 or 1902, devised a scheme by which they were, by indirection, to acquire public timber lands in excess of the maximum amount allowed by law to any one person, and that from time to time, in effecting the purpose of such conspiracy, they joined to themselves different persons, notably Clarence W. Robnett, Jackson O'Keefe, Fred Emory, C. W. Colby, and Harvey J. Steffey, and, either directly or through the persons so associated with them, entered into unlawful agreements with numerous qualified entrymen, by which such persons should, ostensibly for their own use and benefit, but in reality for the use and benefit of the defendants, acquire title, with the understanding that immediately or soon after the acquisition thereof they should, for a small consideration, convey it to the defendants or one of them. It is further the theory of the Government that the three defendants were to have undivided interests in the fruits of the unlawful scheme. By stipulation of all of the parties to the several suits, there was a consolidation for the purpose of taking the testimony, with the understanding that only so much of the evidence so taken should be considered in the disposition of any one of the three suits as should be deemed to be pertinent to the issues therein involved.

It is obvious that unless the circumstances surrounding the acquisition of title to the numerous claims involved are the same or very similar, a detailed consideration of all the issues presented by the record, both of fact and of law, [245—2]



would be impossible without extending the discussion to an unreasonable length, and upon investigation I do not find such identity of conditions widely prevailing. So far, therefore, as the general aspects of the case are concerned, both those of law and of fact, it must in the main suffice to state conclusions and general principles, without any attempt to review the voluminous record of circumstantial evidence and conflicting testimony, or to analyze or comment upon the numerous decided cases more or less in point.

#### TESTIMONY OF CLARENCE W. ROBNETT.

While the evidence was taken and reported by a special examiner, many of the transactions involved have been the subjects of investigation in this court at different times during the last five years, in connection with the criminal prosecution of the defendants, and certain of the witnesses appearing before the examiner have testified upon the same subjects one or more times in the criminal trials, so that there has been some opportunity for observing their manner of testifying and of forming some estimate of their disposition and intelligence. Owing to the unusual status of the witness Robnett, and the peculiar conditions under which he testified, and also the fact that, to establish certain of its contentions, the Government necessarily depends very largely, if not entirely, upon his credibility and the weight to be accorded to his testimony, it is perhaps appropriate that comment should be made thereon at this time. Admittedly his testimony is to be treated as that of an accomplice, and therefore is to be received cautiously and scrutinized with care. As in considering



the evidence of the defendants themselves respect should be had to their deep interest in the result of the suit, as affecting their credibility and the weight to be given to their testimony, so it is [246—3] generally thought that the inducements to falsehood on the part of an accomplice are so great that in criminal cases, in many jurisdictions, a conviction cannot be had upon the uncorroborated testimony of an accomplice, and generally juries are cautioned against giving hasty or undue credence to such testimony. True, in suits like these the same measure of proof is not required as in criminal cases, where it is necessary to establish the guilt of the accused beyond a reasonable doubt, but the same general considerations applicable to the testimony of defendants and accomplices in criminal cases are applicable here; that is, their testimony is to be considered in the light of their deep interest and strong temptation to power or color the truth. *United States vs. Reagan*, 157 U. S. 301.

But while the testimony of Robnett is to be treated as that of an accomplice that fact is not the most serious consideration affecting its credibility. An accomplice may, and not infrequently does, take the witness-stand with a reputation for both truth and integrity unimpeached, save for the charge concerning which he testifies, and in which he is said to be implicated. The case of this witness is entirely different, as will appear from a brief statement of the facts touching his conduct and the circumstances under which he testified. In the first place, it appears from credible evidence, independent of his ad-

missions to the same effect, that in several instances he deliberately induced entrymen to make false statements both in their applications and in their testimony upon final proof, relative to entries herein involved, which false statements, although in some cases not constituting technical perjury, involved on the part of Robnett all of the moral obliquity of perjured statements, because they were made under oath, at a time when it was assumed that such oath was authorized by law. [247—4] Subsequently he was indicted and convicted of subornation of perjury, in inducing entrymen in their preliminary applications in the land office, falsely to represent under oath, that they had personally visited the lands applied for prior to initiating their entry. Upon writ of error the judgment of this Court was reversed, for the reason that that part of the sworn statement was not authorized by statute, and was only a requirement of the land department, and therefore could not be made the basis of a charge of perjury or subornation of perjury, even though the statement made was wilfully false. In the second place, after Robnett's conviction, and prior to the reversal referred to, the three principal defendants were put on trial upon the charge of conspiring to defraud the United States out of the title and possession of some of the timber lands described in the bills of complaint. At such trial Robnett was called and testified upon behalf of the defendants, and, while so testifying, under oath, in open court, he made many statements of fact which are directly contrary to, and wholly irreconcilable with, the testimony which he gave be-



fore the examiner in these cases. And again, not a great while before giving his testimony before the examiner, he made affidavit to statements wholly irreconcilable with statements here made under oath. Under such circumstances it is insisted by the defendants that it cannot properly be held that the witness recognizes the sanctions of an oath, or has any regard therefor; and there is suggested the further question, to which testimony the greater weight should be accorded, that given at the criminal trial, favorable to the defendants, or that given in the present suits, favorable to the Government. There is no evidence of any change of moral attitude, and the witness does not pretend to say that he has been driven by remorse or is actuated by a high sense of duty. At the time he was engaged in persuading entrymen to make false representations [248.—5] to the officers of the land department he should, by reason of his general intelligence, his business experience, his religious training and environment, have been quite as fully conscious as he has at any time since been, or the moral quality of the act of making or inducing a false statement under oath; and the incentive or inducement at that time was, and could have been, nothing more than the comparatively small profit which he may have hoped to make out of the enterprise in which he was engaged, whereas, as we shall see, his testimony here was given under conditions touching his personal liberty. When testifying in the criminal trial the only possible incentives which we may assume he had to testify falsely were his friendship to the defendants,



and a possible feeling upon his part that his own personal interest in the criminal prosecutions which were being waged against him was, in a measure, linked with the interests of the defendants, and that therefore, in testifying as he did, he was acting in self protection. To put it in another way, and to take the view most favorable to the Government, he testified in that case with the interest of a defendant seeking by his testimony to escape the consequences of an unfavorable verdict upon a charge of conspiracy to defraud, and possibly of subornation of perjury, although upon that charge he had already been tried and found guilty. While, in that view, his testimony at that time was given under conditions strongly tempting him to pervert the truth, the conditions under which he gave the present testimony may have presented quite as strong a temptation, if not a stronger one. It seems that while indictments were still pending against him, charging him with offenses connected with his land transactions, and while he was employed as bookkeeper in the Lewiston National Bank, he violated the national banking laws in a number of particulars, one of such violations being the abstraction and embezzlement of divers sums of money [249—6] aggregating an amount alleged to be greatly in excess of \$100,000.00. He was arrested upon a charge of one or more of such violations of the law, and held to appear before the grand jury. After such arrest, and prior to the convening of the grand jury, negotiations were entered into between him and special agents of the Government, at the instance of the latter, as a result

of which he appears to have concluded to testify as a witness for the Government, not only in these suits, but in the criminal cases still pending against the three principal defendants and others, and also before the grand jury in relation to the affairs of the Lewiston National Bank, which were to be made the subject of investigation. It is quite unnecessary to relate the details of what occurred in this connection. He states that no definite promise of immunity was ever made to him, and possibly that he was informed by the special agents that they did not have the authority to make such an agreement. With some apparent reluctance, he admits that he decided to take the course which he was asked to take, and which, after some hesitation, he concluded to take, with the hope that in some way he would profit thereby. From that time on he appears to have placed himself wholly at the service of the officers of the Government. He testified before the grand jury which was engaged with the affairs of the Lewiston National Bank, and which, after making investigation, returned several indictments charging the defendants Kester and Kettenbach, and also the defendant F. W. Kettenbach, and Robnett himself, with a large number of offenses, including embezzlement, in violation of the national banking laws. Later, at a trial of the three principal defendants, upon the charge of conspiring to defraud the United States, in connection with the entry and acquisition of title to timber lands herein involved, he testified, upon behalf of the Government, his testimony being in many respects [250—7] the same as that given before the



examiner, and later he testified at three different trials involving charges against the defendant Kester and the defendants W. F. Kettenbach and F. W. Kettenbach, relating to the affairs of the Lewiston National Bank. In the meantime, before the trial of any of the national bank cases, the criminal charges against him, growing out of his timber transactions, were dismissed upon motion of the Government.

The contention is made upon behalf of the defendants that, as a result of the overtures of the special agents of the Government, an agreement was entered into with Robnett, possibly not express, by which, in consideration of a promise of immunity, he was to testify on behalf of the Government, not only in the bank cases, but also in the timber cases, both criminal and civil. While the contention is not without support in the record, it rests upon no substantive evidence, but is an inference only from the attitude and conduct of Robnett and the officers of the Government. In the absence of substantial evidence, and especially in view of the disclaimer of knowledge of any such agreement upon the part of the responsible representatives of the Government, I should be loath to believe that any agreement was entered into. But the question whether there was or was not such an agreement is quite immaterial. The primary inquiry relates to the motives which actuated the witness in placing himself in the hands of the prosecuting officers, and the incentives he had for giving testimony disclosing criminality upon his part. It is wholly unimportant whether or not he had any agreement



for immunity, if, as he admits to be the case, he pursued the course which he did pursue, and testified for the Government, with the hope of receiving favorable consideration. It is not to be assumed that any of the officers of the Government would knowingly encourage or countenance a falsification of the facts by him, but, being conscious of the fact that by reason of the pendency of the bank indictments his liberty was largely within [251—8] the power of the prosecuting officers, there must have been present, to an unusual degree, the strong inducement under which an accomplice frequently testifies, to give such evidence as, in his judgment, would tend to ingratiate him in the good will of those upon whom he was dependent. It is quite incredible that he did not learn from some source that the prosecution, as a rule, is not ungrateful for information furnished by persons charged with crime, and his hope that he might profit by such consideration proves not to have been entirely unfounded, for, subsequent to his giving testimony in the several cases, it is a matter of record in this court, and of common knowledge, that upon his pleading guilty to each of six different counts, charging violation of the national banking laws, by making false entries or false reports, and five counts, charging embezzlement or abstraction of funds belonging to the bank, aggregating approximately \$137,000.00, he was promptly granted an absolute pardon.

In view of these circumstances, it must, I think, be concluded that the conditions under which he testified before the examiner were calculated to operate

quite as potently in inducing him to pervert the truth as the conditions under which he first gave his testimony in the criminal prosecution of the three principal defendants. To give any great measure of weight to testimony coming from one who apparently does not hesitate to profit by perjury and who here may have had the strongest possible incentive to pervert or color the truth would be to put aside, as wholly unimportant, the supposed sanctions of an oath, and to act arbitrarily. True, the witness may have been telling the truth, but where his testimony is uncorroborated upon what ground shall it be assumed or presumed that he was telling the truth? Resort may be had to internal evidences of the credibility of his story, but the evidences thus presented are neither conclusive nor highly persuasive. Of his contradictions [252—9] it may be said by the one side that they are only such discrepancies as are to be looked for in an account given by a truthful witness of numerous and complicated transactions, and by the other, that they disclose the falsity of his testimony as a whole. On the one side it may be reasonably argued that it is incredible that a witness could have fabricated a story so detailed, and upon the other hand, with apparently equal reason, it can be argued that it is incredible that any witness could have recalled the detailed facts and circumstances and the numerous conversations, important and unimportant, to which the witness testified.

#### FORMER TESTIMONY OF WITNESSES.

As already stated, many of the witnesses who appeared before the examiner had theretofore testified



in open court or made affidavits relative to the same matters, and much of such testimony, and a number of such affidavits, have been read into this record. There seems to have been, if not a disregard, a serious misapprehension on the part of counsel of the conditions under which the former statements of a witness may be received, and the probative effect thereof. In some instances such statements seem to have been called to the attention of the witness for the ostensible purpose of refreshing his memory, and in other cases they were offered in evidence for impeachment purposes. It is doubtless true that some of the witnesses called for the Government testified unwillingly, and one of them at least declined to testify at all, upon the ground that answers to the questions propounded might tend to incriminate him. While the trial court may, in its discretion, permit the party calling a hostile witness to put to him leading questions, and may also permit leading questions to be asked when counsel conducting the examination is surprised by the statements of the witness, and may, in case of such surprise, receive evidence of inconsistent statements made by the witness at other times, and [253—10] may permit a witness to refresh his recollection by reference to a memorandum or writing, such discretion is not unlimited, and such rules are not without qualifications. A party knowing that a witness will testify in a manner prejudicial to his contentions cannot call such witness merely for the purpose of getting into the record, as substantive evidence favorable to him, statements made under oath by such witness at some other time. A contra-



dictory statement is receivable only for the purpose of relieving the surprised party of the prejudice of testimony that he had no reason to expect would be given. Under no conditions can it be regarded as substantive proof to establish one of the issues of the case, but at most it can avail the party by whom it is invoked only to the extent of rebutting or offsetting the effect of the unexpected testimony of his own witness. Such a statement therefore, can never serve as the basis for affirmative relief. With rare exceptions it was improper to import into the record in this case statements made by such witnesses at former hearings under the guise or upon the pretext of refreshing their memories, as was so frequently done, for the affidavits and testimony to which attention of the witnesses was directed were given months and even years after the occurrence of the events to which they related. The precise question is decided and elaborately discussed in *Putnam vs. United States*, 162 U. S. 687. In that case the trial court permitted the prosecution to refresh the memory of a witness by calling his attention to the testimony given by him before the grand jury which returned the indictment upon which the defendant was being tried. The transaction constituting the subject of investigation occurred in August, 1893, and the indictment was returned in December of the same year. The testimony before the grand jury was therefore given about four months after the transaction to which it related. The Court said: [254—11] “We think it clear that testimony given after this lapse of time was not contemporaneous, and that it

would not support a reasonable probability that the memory of the witness, if impaired at the time of the trial, was not equally so when his testimony on the prior occasion was committed to writing.”

It was further said that the very essence “of the right to thus refresh the memory of the witness is that the matter used for that purpose be contemporaneous with the occurrences as to which the witness is called upon to testify.”

Continuing, the Court said: “In conflict with the well-settled rule to which we have just referred, there are some adjudications of the courts of last resort of several states, noted in the margin of this opinion, holding that there exists an exception to the general rule which restricts the right to refresh memory to contemporaneous memoranda or writing. This exception is said to arise when a party is surprised by the unexpectedly adverse testimony of his own witness, in which case he may, for the purpose of refreshing the memory of the witness, be permitted to ask him as to any prior statements, whether oral or written, without reference to their contemporaneousness. The error of this conclusion, as we shall hereafter demonstrate, originally arose from a misconception of the doctrine laid down in *Wright vs. Beckett*, or *Melhuish vs. Collier*, *infra*, and has been continued by merely following this first departure from correct principles.” And thereupon the Court proceeds, at great length, to show how and to what extent the misconception of general principles had led to the adoption of an erroneous rule



in certain jurisdictions. In closing its review of the cases approving a practice similar to that followed in this case, the Court said: "Indeed, if the principles upon which these cases necessarily rest are pushed to their logical conclusion, they not only, under the guise of an exception, overthrow the general rule as to refreshing memory, but also subvert the [255—12] elementary principles of judicial evidence. The fact that these consequences are the legitimate and necessary outcome of the cases we have reviewed depends not on mere abstract reasoning, but is demonstrated by the case of *People vs. Kelley*, 113 N. Y. 647, 651 (1889). In that case, on the sole authority of *Bullard vs. Pearsall*, it was held that where inconsistent or adverse statements had not been given by a witness for the State, but, from mere forgetfulness or a wish to befriend the accused, the witness had omitted to testify to certain details, error had not been committed by the Court in allowing the prosecuting attorney, for the purpose of refreshing the recollection of the witness, to inquire of him whether he had not testified to the omitted facts before the committing magistrate and grand jury, and, upon his admission that he had done so, to ask him if the statements theretofore made were not true, and that the affirmative reply of the witness was competent evidence to submit to the jury. Not only the error but the grave consequences to result from such a doctrine were aptly pointed out by Chief Justice Shaw in *Commonwealth vs. Phelps*, 11 Gray, 73, where an attempt was made to refresh the memory of a witness by reference to testimony before a grand



jury not contemporaneously given. The Chief Justice said:

“ ‘It is not a regular mode of assisting the recollection of a witness to recur to his recollection of his testimony before the grand jury. If it was not true then, it is not true now; if it was true then, it is true now, and can be testified to as a fact. Of what importance is the fact that he had a memorandum to aid him in testifying before the grand jury? To ask what he testified to before the grand jury has no tendency to refresh his memory. The fact of his having testified to it then is not testimony now. It is an attempt to substitute former for present testimony.’ ”

“Equally lucid and cogent are the expressions of the [256—13] Supreme Court of Pennsylvania in *Velott vs. Lewis*, 102 Penn. St. 326, where, in holding that the memory of a witness could not be refreshed by reading to him notes of testimony given by him in a former trial of the same cause, the Court said (p. 333): If the fact that ‘a witness failed to recollect what he had previously sworn to were enough to admit the notes of a former trial, we might as well abandon original testimony altogether, and supply it with previous notes and depositions.’ ”

#### FINAL PROOF PAPERS AS EVIDENCE.

A large number of exhibits were offered in evidence by the Government, many of which are the statements of the entrymen and their witnesses made at the time of final proof. These latter papers were received over the objection of counsel for the defendants, who insist that under the rule laid down in the

case of *United States vs. Williamson*, 207 U. S. 425, they are incompetent and immaterial for any purpose. Speaking for the Court in that case, Mr. Justice White, said:

“As, then, there was no requirement concerning the making in the final proof of an affidavit as to the particulars referred to, and as the entryman who had complied with the preliminary requirements was under no obligation to make such an affidavit and had full power to dispose *ad interim* of his claim upon the final issue of patent, we think the motive of the applicant at the time of the final proof was irrelevant, even under the broad rule which we have previously in this case applied, and therefore that error was committed not alone in instructing the jury that the indictment covered or could cover the procurement of perjury in connection with the final proof, and that the jury might base a conviction thereon, but in admitting the final proof as evidence tending to show the alleged illegal purpose in the primary application for the purchase of [257—14] the lands.”

While it is not thought that in conforming to this ruling it is necessary to hold that final proof papers could not, in cases like these, under any circumstances become material for any purpose whatsoever, the purposes for which they can be received are necessarily limited and special. Apparently the principal object in offering them here was to show that many of the entrymen made false statements at final proof touching the sources from which they had procured the funds with which to pay for the land, and the length of time they had had such funds in their pos-



session. It seems that there prevailed in the community the belief that an entryman could not properly pay the Government price of lands with borrowed money, and in a large number of cases the statements made upon this subject by the entrymen, in answer to interrogatories put to them, were flagrantly false. The immorality of such perversions of the truth is, of course, much to be deplored, but the question here is whether or not the deception constitutes actionable fraud or tends to prove the existence of such fraud. Under the circumstances of the case, and in view of the prevalent understanding that the officers of the land department would not accept borrowed money, there is no room for the inference that because the entryman perverted the truth in this particular he also falsified the facts in some other particular. Nor is it thought that the deception constitutes actionable fraud; the plaintiff was not thereby misled to its injury. At section 890 of Pomeroy's Equity Jurisprudence (Vol. 2, 3rd Ed.), the learned author says:

“The misrepresentations must, however, be concerning something really material. Statements, although false, respecting matters utterly trifling, which cannot affect the value or character of the subject matter, so that if the truth had been known the party would not probably have altered his conduct, are [258—15] not an occasion for the interposition of equity.”

And at section 898 of the same text, it is said: “The last element of a misrepresentation, in order that it may be the ground for relief, affirmative or de-



fensive, in equity or at law, is its materiality. The statement of facts of which it consists must not only be relied upon as an inducement to some action, but it must also be so material to the interests of the party thus relying and acting upon it that he is pecuniarily prejudiced by its falsity, he is placed in a worse position than he otherwise would have been."

It is not here pretended that under the law it is material whether the entryman borrows the money with which he makes final proof, provided it belongs to him at the time he tenders it in payment at the land office. There being no other objection to the entry, the officers of the land department are bound to accept it and issue the patent. Aside from the popular belief or fear already adverted to, there is no ground for the inference that the officers of the land department would, in violation of the law, have declined to issue patent to any one of the entrymen named in the bills of complaint, even if they had know that the purchase price was paid with borrowed funds, and that therefore the statements of the entrymen in that respect was untrue. There is no evidence that, as a matter of fact, such views were entertained by the land department, or that it was the practice to decline to receive in payment money which had been borrowed. But whatever the practice may have been, as a matter of law it is immaterial whether the money was borrowed or not, and, that being true, the deception related to an immaterial matter, and therefore does not constitute actionable fraud. To take any other view would be to hold that a patent which in reality the entryman

was entitled to receive should now be set aside merely because [259—16] he practiced deception as to a fact upon which his right in no wise depended. Under the law any citizen, either native born or naturalized, is qualified to make an entry under the timber and stone act. Suppose that an entryman, in response to an inquiry by the officers of the land department, states that he is native born, when, as a matter of fact, he is a naturalized citizen; clearly such misrepresentation could not be assigned as a sufficient ground for the cancellation of the patent, for the very good reason that it was wholly immaterial whether the entryman is native born or naturalized, provided he is a citizen of the United States. So, it being immaterial whether the money tendered by the entryman has been borrowed or has been acquired in some other way, his misrepresentations relative thereto do not serve as a substantive ground for the cancellation of patent. In this view doubtless many of the final proof papers offered in evidence are without evidentiary value; others may be considered as a part of the *res gestae*, and as throwing some light upon the questions at issue. It is, however, not thought necessary in detail to consider and pass upon the objections thereto, for no substantial prejudice can result to the defendants by permitting them to remain in the record.

#### FALSE STATEMENTS IN PRELIMINARY APPLICATIONS.

During the course of the hearing before the special examiner it incidentally appeared that in one instance the patentee was not a citizen of the United



States at the time he made his application, and that several entrymen falsely stated under oath in their preliminary applications that they had personally visited the land prior to the time they presented their applications. These facts are not pleaded by the Government as reasons for cancelling the patent, nor, in the argument, have they been assigned as a basis for any affirmative [260—17] relief. Apparently the entryman who was not a citizen, in good faith believed that he was a citizen at the time he made his entry. Concerning the entries made by those who had not personally visited the lands prior to the initiation of the entries, it is to be said that they are all embraced within the group in which Robnett was interested, and it is found from the evidence that no one of the defendants now holding title to or having any interest in such lands had knowledge at the time of acquiring such interest or title of the falsity of the entryman's preliminary statement. In view of these conditions, it is unnecessary to consider what effect, if any, should be given to a false representation of this character in a suit against the entryman to cancel a patent where such misrepresentation is pleaded as a substantive ground for affirmative relief. In *United States vs. Robnett* (C. C. A. 9th Circuit), 169 Fed. 778, it was held that such a false statement, even though wilfully made, does not constitute perjury, for the reason that it is not within the requirements of the statute.

#### CERTAIN PRINCIPLES OF LAW.

While no authoritative decision can be found comprehensively applicable to the great variety of cir-



cumstances under which the entries herein involved were made and the lands were alienated by the entrymen, in most of its features the scope and meaning of the Timber and Stone Act are no longer in doubt. In the case of *United States vs. Budd*, 144 U. S. 154, it was held that "The act does not in any respect limit the dominion which the purchaser has over the land after its purchase from the Government, or restrict in the slightest his power of alienation. All that it denounces is a prior agreement, the acting for another in the purchase. If, when the title passes from the Government, no one save the purchaser has any claim upon it or [261—18] any contract or agreement for it, the act is satisfied. (A contemplating purchaser) might rightfully go or send into a vicinity and make known generally or to individuals a willingness to buy timber land at a price in excess of that which it would cost to obtain it from the Government; and any person knowing of that offer might rightfully go to the land office and make application and purchase a timber tract from the Government."

In *United States vs. Williamson*, 207 U. S. 425, it was held that "If an applicant has, in good faith, complied with the requirements of the second section of the act, and, pending the publication of notice, has contracted to convey after patent his rights in the land, his so doing could (not) operate to forfeit his right." That is to say, after the initiation of the entry and before final proof, it is competent for the entryman to contract to make a transfer of the land after he shall have acquired title.

Recently the Circuit Court of Appeals of this circuit, in deciding the case of *United States vs. Barber Lumber Company, and others* (opinion filed February 19, 1912), wherein issues were involved very similar to those presented in the case at bar, used the following language:

“The decision of the present case is ruled by the legal principles announced in the Budd case and in the Clark case. Those decisions are authority for the proposition that a person or corporation desiring to acquire title to a large body of timber lands of the United States under the Timber and Stone Act, may express that desire to another, and may enter into an agreement with him to buy the lands upon his obtaining title thereto; may loan him the money with which to acquire title, and may inspect and select the lands, and that such person or corporation is not bound to inquire into the method by which the other [262—19] party to the contract acquires title, and is not chargeable with knowledge of any fraud upon the land laws that he may resort to, and that, in taking titles based upon the issuance of final receiver’s receipts to the entryman without actual knowledge of such fraud or of facts sufficient to put one upon inquiry, such person or corporation is an innocent purchaser of the lands.”

In *Hasemann vs. Groff*, 199 U. S. 342, there was involved the validity of an agreement relating to what is popularly known as a pre-emption claim, entered under the provisions of section 2262 of the Revised Statutes of the United States. As will be seen upon a reference to this section, the pre-emp-



tioner was required to take an oath in all substantial respects identical with that required of an entryman under the Timber and Stone Act, that is, he was required to state under oath that he did not make the entry on speculation, but in good faith to appropriate the same to his own exclusive use, and that he had not, directly or indirectly, made any agreement or contract by which the title which he might acquire should inure in whole or in part to the benefit of any person other than himself. It was held that an agreement in writing between the pre-emptioner and third parties by which, in consideration of the payment by such third parties of one-fourth of the expenses of procuring title to a specified tract of public land under the pre-emption law, the entryman was to give to such third parties one-fourth part of the price and proceeds that might be obtained for the sale of the land after he had obtained title thereto from the United States, upon finding a purchaser therefor and making a sale thereof at a proper value, was not obnoxious to the law, or inconsistent with the obligations of the oath referred to. Applying such a construction to the Timber and Stone Act, it may be doubted whether in the case of several of the entries procured by [263—20] Robnett the understanding had between him and the entryman, even if his version of such understanding were accepted without qualification, should be held to be in contravention of the law.

#### RIGHTS OF INNOCENT PURCHASERS.

In *United States vs. Detroit Lumber Company*, 200 U. S. 321, it is held that, "In passing upon trans-



actions between the Government and its vendees we must bear in mind the general principles of equity, and determine rights upon those principles, except as they are limited by special statutory provisions. And clearly upon those principles a party purchasing an equitable right is entitled to be protected in his purchase so far as it can be done without trespassing upon the rights of others."

And it is further said: "A patent from the United States operates to transfer the title not merely from the date of the patent, but from the inception of the equitable right upon which it is based. *Shepley vs. Cowan*, 91 U. S. 330. Indeed, this is generally true in case of the merging of an equitable right into a legal title. Although the patents in this case were not issued until after the sales of the timber, yet when issued they became operative as of the date of the original entries." And it was accordingly held that one who in good faith and for value purchases from an entryman, after the issuance of final receipt and before patent, is, in a suit commenced by the Government after the issuance of patent, entitled to the protection usually accorded to innocent purchasers for value. See, also, *United States vs. Clark*, 200 U. S. 601; *United States vs. Barber Lumber Co.*, *supra*.

#### MEASURE OF PROOF.

It is familiar law that something more than a bare preponderance of the evidence is required before affirmative [264—21] relief can be granted to the complainant in actions of this character. In the *Maxwell Land Grant* case, 121 U. S. 325, it is au-

thoritatively declared that to annul a patent and destroy the title claimed thereunder, "the facts on which this action is asked for must be clearly established by evidence entirely satisfactory to the court." And further that: "In this class of cases the respect due a patent, the presumptions that all the preceding steps required by law had been observed before its issue, the immense importance and necessity of the stability of title dependent upon these official instruments, demand that the effort to set them aside, to annul them, or to correct mistakes in them, should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by the proof. It is not to be admitted that the titles by which so much property in this country and so many rights are held, purporting to emanate from the authoritative action of the officers of the Government, and, as in this case, under the seal and signature of the President of the United States himself, shall be dependent upon the hazard of successful resistance to the whims and caprices of every person who chooses to attack them in a court of justice; but it should be well understood that only that class of evidence which commands respect, and that amount of it which produces conviction, shall make such an attempt successful."

#### GENERAL FINDINGS OF FACT.

From a consideration of all of the evidence, it is found as a fact that during the period covered by the record the defendants W. F. Kettenbach and George H. Kester, respectively the president and cashier of the Lewiston National Bank, were asso-



ciated together in the acquisition of timber lands in the vicinity of Lewiston, Idaho, where they resided. [265—22] Some of the lands acquired by them they purchased jointly, both of them being named as grantees in the instruments of conveyance; and others were acquired by Kettenbach in his own name and in his own right, and still others were purchased by Kester individually. In their joint enterprise each recognized the other as having authority to act for both.

The defendant Dwyer was a timber cruiser and locator, and figures prominently in the transactions disclosed by the record, in various capacities. During much of the time covered by the record he was employed by the defendants Kettenbach and Kester, at a fixed salary, or upon a commission, or both, to render services of different kinds, and during the same time he acted independently, or upon his own account, in various ways. He himself acquired title to several different tracts of timber lands for his wife Kittie E. Dwyer, or in her name. He had no joint or partnership interest with the defendants Kettenbach and Kester, or either of them, in the lands which they purchased; and in the lands taken in the name of Kittie E. Dwyer it is found that neither Kester nor Kettenbach had any interest. In one project Dwyer was to have a joint or partnership interest with the defendants Kester and Kettenbach, but that related not to the public lands of the United States, but to State lands, which the defendants planned to purchase from the State of Idaho. There is some testimony to the effect that the



three defendants, Kester, Kettenbach and Dwyer, were jointly interested in the acquisition of title to the lands herein involved, but upon consideration of all the facts and circumstances it is thought that the preponderance of the evidence is against such theory.

It is further found that at no time during the period covered was there any associational arrangement either by way of partnership or joint ownership, or otherwise, between these three defendants, or any one of them, and the defendant Robnett, [266—23] in the acquisition of the title to any of the lands involved. There is practically no evidence to support such a theory. True, Robnett was instrumental in securing the entry of a number of tracts, title to some of which passed to the defendants Kester and Kettenbach, or one of them. In such transactions, however, there was no community of interest existing between Robnett and the purchasers. Their actual relations will be considered in connection with the discussion of the specific entries.

#### THE SPECIFIC ENTRIES OR CLAIMS.

We pass, now, to a brief consideration of the specific entries or claims, and such discussion only is indulged in as seems to be necessary to indicate the reasons for the conclusion reached. Certain claims may be summarily disposed of by the mere statement that there is no substantial evidence at all in support of the contention that the entrymen violated any provision of law in acquiring their titles. Such are the entries of JOHN W. KILLINGER, WILLIAM E. HELKENBERG, FRED E. JUSTICE,

WILLIAM HAEVERNICK, ALMA HAEVERNICK, GEORGE W. HARRINGTON, and GEARY VANARTSDALEN. And as to certain other claims the evidence goes little further than to suggest a suspicion of invalidity, based largely upon the intimate relations existing between the several entrymen and the defendants Kettenbach and Kester. The evidence is wholly insufficient to warrant a cancellation of the patents. Such are the claims of EDNA P. KESTER, ELIZABETH KETTENBACH, WILLIAM J. WHITE, ELIZABETH WHITE, MAMIE P. WHITE, and MARTHA E. HALLETT.

In the case of three other claims, namely, those of IVAN R. CORNELL, ROWLAND A. LAMBDIN, and FRED W. SHAEFFER, it is conceded by the Government that prior to the commencement of the suits the title had, for a valuable consideration, passed to and is now held by an innocent purchaser, and that [267—24] therefore no equitable relief can properly be granted. In view of such concession the validity or invalidity of the original entries need not be discussed, and the evidence relative thereto has been considered only in so far as it bears upon the validity of other controverted entries.

#### THE EMORY-COLBY GROUP.

Six entries, namely, those of LON E. BISHOP, FREDERICK W. NEWMAN, CHARLES DENT, CHARLES SMITH, JAMES C. EVANS, and JOSEPH B. CLUTE, are, in the record, referred to as the "Emory-Colby Group," because the witnesses Fred Emory and C. W. Colby rendered some assist-



ance to the entrymen in procuring the requisite funds, and later in negotiating the sale of the lands to the defendants Kettenbach and Kester. There is no contention that Kettenbach and Kester had anything to do with the entries until about the time of final proof, when, at the solicitation of Colby, they agreed to advance the money, and thereafter, closely following the final proof, they purchased the claims; it is obvious therefore that they could not have had any unlawful agreements with the entrymen. The theory of the Government, however, is that such agreements had been entered into with Emory and Colby, or one of them, and that the defendants were advised of such agreements before they purchased the lands. Aside from the testimony of Robnett, there is no direct or positive proof that any one of the claims was invalid, and while the conditions surrounding the transfer are of such a nature as to warrant a close scrutiny of the claims, the circumstances are quite as readily reconcilable with the theory of the lawfulness as with the theory of the unlawfulness of the relations existing between the several entrymen and Emory and Colby. It is conclusively [268—25] shown, I think, that in material respects Robnett's account of what occurred in the bank is incorrect, and I am convinced that the witness Colby truly states how Kettenbach and Kester came to purchase the claims. Upon the whole, it is thought that the evidence is insufficient to warrant a cancellation of any one of these patents.

#### ENTRY OF GUY L. WILSON.

This entry was made April 25, 1904, passed to final



proof July 13, 1904, and the lands embraced therein were conveyed to the defendants Kettenbach and Kester on July 13, 1904, who mortgaged the same to the Idaho Trust Company on July 6, 1907. The deed of transfer to Kettenbach and Kester was not recorded until June 24, 1907. I am satisfied from the testimony of the entrymen, reluctantly given, that, while there was no express agreement, there was a perfect understanding between him and the defendant Dwyer, acting as the agent for Kester and Kettenbach, that all expenses incident to the acquisition of title should be paid by Dwyer, and that the entryman was to receive \$150.00, in consideration of which he was, upon acquiring title, to convey the same to Kester and Kettenbach. It is not necessary to decide whether or not Kester and Kettenbach had any actual knowledge of the arrangement with Dwyer; Dwyer being their agent, they are charged with notice. Nor is it thought that the Idaho Trust Company stands in the position of an innocent purchaser. Its chief officer, the defendant Frank W. Kettenbach, is an uncle of William F. Kettenbach, and was upon friendly, if not intimate, terms not only with W. F. Kettenbach, but with Kester, Dwyer and Robnett. Prior to the time the trust deed or mortgage was taken, the validity of this entry had been called into question by indictments filed in this court, and by criminal trials at a comparatively short distance from Lewiston, where the Trust Company was engaged in business, the [269—26] trials resulting in the conviction of Robnett, Dwyer, Kester and William F. Kettenbach. The trials at-

tracted wide attention, and it is hardly conceivable that, under the circumstances, the officers of the Trust Company were ignorant of the fact that the validity of this entry was being assailed by the Government. Taking into consideration all of the circumstances, including the relation of the parties, I think it must be held that the facts were sufficient to put the Trust Company upon inquiry, and that it took the title at its peril. It is therefore held that the patent should be cancelled.

### ENTRY OF FRANCES E. JUSTICE.

In many particulars the conditions under which this entry was made are very similar to those of the entry of Guy L. Wilson. The entrywoman is the mother-in-law of Wilson, and both entries were made upon the same day, that is, on April 25, 1904, and passed to final proof the same day, that is, on July 13, 1904. In this case the entrywoman did not execute a formal conveyance until March 30, 1906, at which time a transfer was made to Kittie E. Dwyer. The money with which all of the expenses of acquiring title, including the purchase price of the land, were paid, was borrowed through Dwyer, and a note was executed to cover the same on the day of final proof. Immediately after making final proof the entrywoman turned over to Dwyer the final receipt, and the note, which was in the Lewiston National Bank, was returned to her, apparently as a matter of course. While the evidence of a prior agreement is not so conclusive as that in relation to the Wilson entry, I am satisfied from all of the facts and circumstances, including the attitude and con-



duct of the entrywoman herself, and the failure of the interested parties to explain certain incidents exclusively within their knowledge, that the entry was [270—27] initiated with an understanding between the entrywoman and Dwyer that she should receive a specified amount, free of all expenses, and should convey the title to or in compliance with the demands of Dwyer. The patent in this entry is therefore held for cancellation.

#### ENTRY OF ROBERT O. WALDMAN.

This entry was made on March 6, 1903, final certificate issued May 25, 1903, and patent August 3, 1904. Immediately upon making final proof the entryman deeded to Robnett, and thereafter, at the time Robnett left the employ of the Lewiston National Bank, he executed a deed to Elizabeth White, dated July 8, 1907, and upon October 25, 1907, Elizabeth White, by a quitclaim deed, and Robnett by a similar instrument, transferred their several interests to the Lewiston National Bank. While the entryman and Robnett do not in all respects agree as to the details of the arrangement under which the land was entered, the effect of the testimony of either one is to render the entry invalid. It is clear, I think, that it was understood before the entry was initiated that Waldman was to realize \$400.00 in excess of his expenses in making the entry, and whether the understanding was technically that he should sell his right for \$400.00, or that he was to execute a deed and place it in escrow, to be delivered upon his receiving a net profit of \$400.00, is immaterial; one agreement would be quite as illegal as



the other. There is no evidence touching the regularity of the entry other than that of Robnett, and Waldman himself, and the substance of what they testify to is not out of harmony with the other circumstances of the case. I have no hesitation, therefore, in concluding that the entry was invalid, and the only question remaining is as to whether or not the Lewiston National Bank is an innocent purchaser for value. Robnett testifies that he advised W. F. Kettenbach and the defendant Kester of his [271—28] arrangement, and also, just before he made the transfer to Elizabeth White, he advised Frank W. Kettenbach, who had recently become the president of the bank, of the arrangement he had with the entryman. His testimony as to notice to the bank of the invalidity of the claim is denied by Kester and both the Kettenbachs, and perhaps should not be credited. However, the transfers by Robnett were made after the trial of certain criminal cases in this court in the fall of 1906, in which the defendants Robnett and Dwyer were defendants, resulting in convictions for subornation of perjury, and in the spring of 1907, in which the defendants Kester, Dwyer and W. F. Kettenbach were defendants, resulting in convictions for conspiracy to defraud. During the course of the trial of those cases certain of the entries herein involved were put in question, and evidence touching their validity was given. One of the claims was the one now under consideration, and at the trial the entryman was called as a witness, and gave testimony substantially the same as that now given by him. By reason of

the prominence of the defendants, and of certain other features of the case, the trials attracted general attention, and were given wide publicity, and I think, even if Robnett's testimony as to advising the officers of the bank of the facts connected with the entry is rejected, as perhaps it should be, there was sufficient known to the various officers of the bank to put them upon their inquiry, and had they made reasonable inquiry they would have found that, according to the entryman's testimony at least, the title to this tract of land had been secured through fraud. It is not of vital importance that the officers may not have believed that the claim was invalid. It is enough to say that they must have known that the validity of the claim was in question, and they must have known that the Government contended that the title was invalid. If, [272—29] knowing these facts, the bank took a transfer, it acted at its peril; it cannot claim protection as an innocent purchaser. It is accordingly held that the patent to this claim should be set aside.

#### CLAIM OF WILLIAM B. BENTON.

The entry was made August 27, 1902, and final certificate issued November 21, 1902, and patent February 25, 1904. By deed acknowledged January 10, 1903, reciting a consideration of \$1600.00, the entryman conveyed to the defendant Robnett. On July 8, 1907, Robnett conveyed to Elizabeth White, and on September 4th of the same year Elizabeth White conveyed to the Clearwater Timber Company. In substance Robnett testifies that he (Robnett) was to furnish the money to pay the expenses incident to



the entry, and that Benton was to file and prove up, and when the claim was sold the net profits were to be divided. He (Robnett) was to "control the disposition" of the land. It will be observed that the claim was deeded to Robnett shortly after final proof, and that he held it approximately four years before disposing of it. There is no explanation as to how he was to control the sale of the land, or, if he did not pay outright for it when he purchased it, how Benton was protected, and indeed the testimony is very meager as to the details of the transaction. Upon the other hand, Benton, who was placed upon the witness-stand by the defendants, positively denied that he had any such arrangement as Robnett testified to. His version of the transaction is that Robnett was to furnish to him what money he lacked at the time of making the entry, which he (Benton) was to repay. He testifies that he gave Robnett his note, which was to be paid back when the claim was sold. The note was originally given for \$250.00, or \$260.00, and was [273—30] renewed. He testifies that he got in the neighborhood of \$1675.00 or \$1690.00 for the claim. It does not appear that Kettenbach or Kester had any interest in the claim, and Kester seems to have had no connection at all with any transaction relating thereto. The defendant Kettenbach, who had charge of certain funds belonging to his wife's mother, Elizabeth White, purchased the claim from Robnett in July, 1907, taking a deed in Mrs. White's name, and later the lands were sold, together with others, by Mrs. White to the Clearwater Timber Company. Robnett gives as the reason for



transferring the claim to Mrs. White that Kettenbach told him that the Clearwater Timber Company would not purchase any claim directly from Robnett, but that a sale could be made to the company if the lands belonged to Mrs. White, and for that reason Robnett made the transfer. Upon the other hand, Kettenbach testifies that at the time the transfer was made to Mrs. White, Robnett was leaving the service of the bank, and, as Kettenbach puts it, was "leaning" pretty heavily upon Kettenbach. He further testifies that Robnett had some timber claims that he was trying to dispose of, but being unable so to do appealed to Kettenbach to assist him, and, for the purpose of enabling him to sell the lands for Robnett, the transfer was made to Mrs. White, who later transferred to the Clearwater Timber Company. Robnett testifies that he told Kettenbach all about his illegal arrangements with Benton. This is denied by Kettenbach. No reason is given by Robnett why, when he was endeavoring to sell the land, he should have disclosed facts invalidating the title, and it would seem quite irrational for a vendor voluntarily and needlessly to make known the existence of facts which, if true would disclose the invalidity of the title which he is trying to sell. To hold the entry invalid, Benton's testimony must be rejected, and Robnett's believed. Benton is Kettenbach's [274—31] cousin, and it may be assumed that if he had an illegal contract he would be in a general way interested in concealing the facts, but whatever may be the indirect interest of Benton and Kettenbach in the result of the litigation, I think it must be held

that in the absence of circumstances tending to make Robnett's story more probable than theirs, the evidence is insufficient to warrant a cancellation of the patent.

### THE HATTIE ROWLAND CLAIM.

This entry was made by Hattie Rowland on April 25, 1904, and patent issued December 31, 1904. The land was deeded to the defendant Kittie E. Dwyer on April 9, 1906. Hattie Rowland herself did not testify, and there is very little direct evidence relating to the claim. Both of the defendants, Kester and Kettenbach, disclaim any knowledge of or interest in the entry. The defendant Dwyer acted as locator, and later bought the claim for his wife, Kittie E. Dwyer. It is suggested that while the lands were assessed to Hattie Rowland during the year 1907, the taxes were paid by Kester and Kettenbach, but there is little significance in the circumstances. It is known that taxes are very frequently paid upon behalf of the owner by agents or friends, and in this case it seems that for the year 1905 the taxes were paid by the Lewiston Abstract Company, although the land was assessed to Hattie Rowland, and during the year 1906, while the assessment was in the name of Hattie Rowland, the taxes were paid by Kittie E. Dwyer. In the years 1908 and 1909 the taxes were assessed to and paid by Kittie E. Dwyer. In 1909 the assessment was in the name of Kittie E. Dwyer, but the taxes were paid by the Idaho Trust Company. The Government also relies upon the fact that these lands were noted upon plats prepared by the defendant William Dwyer for Kester and



Kettenbach, and delivered by him to a representative of the Shevlin-Clark [275—32] Timber Company, in February, 1906, in connection with a proposal made by the defendant Kester upon behalf of himself and his associate Kettenbach to sell certain timber lands. Certain lands upon these plats were marked with an X, and certain other lands with a circle, and these lands, together with others, were marked with a circle X ⊗. Upon the plat is a notation to the effect that the X indicates lands of Kester and Kettenbach, while the circle indicates land belonging to individuals. There is no notation as to the class of lands designated by circle X ⊗. Under all the circumstances disclosed by the record, it is not thought that much significance can be attached to this piece of evidence alone. The plats were apparently prepared hastily, and were clearly erroneous in some respects. There was no necessity at the time for being entirely accurate as to the ownership of lands or the precise status of the title. The deed from Rowland to Dwyer was executed a short time after these plats were prepared, and it is entirely possible that the defendant Dwyer at the time had arranged for or knew that he could secure the lands, and it is abundantly shown that in proposing the sale of timber lands it was to the advantage of those desiring to sell to make it appear to the contemplating purchaser that there was a large compact body of timber lands available. In other words, if the defendants desired to sell their holdings it was to their interest to make it appear that all of the lands, or at least a large body of land, in the



vicinity could be purchased.

Another circumstance relied upon is the inclusion of the name of the entrywoman in a group of names, and endorsed in the handwriting of the defendant Kettenbach, upon a deposit slip, dated April 26, 1904, but while the slip, with its endorsements, may present a suspicious circumstance, it is not thought that either it or all of the evidence taken together [276—33] is sufficient to warrant a finding that the patent was procured by fraud, or that any one of the defendants acquired any interest in, or had any control over, the claim prior to final proof.

#### CLAIM OF WILLIAM McMILLAN.

This claim was entered April 25, 1904, final proof was made July 18, 1904, and the land was deeded to the defendant Kittie E. Dwyer April 9, 1906. It will be observed that the dates correspond to the dates of the Hattie Rowland claim, and in all substantial respects the evidence relative to the two claims is very similar, with the exception that McMillan himself testified as to the circumstances surrounding the entry and transfer of his claim. The lands were noted upon the plats furnished to Shevlin & Clark, and the name of McMillan appears upon the deposit slip the same as in the case of Hattie Rowland. In 1905 the taxes were assessed to McMillan and paid by the Lewiston Abstract Company. In 1906 and 1907 they were assessed to McMillan and paid by Kester and Kettenbach. In 1908 they were assessed to Kittie E. Dwyer and paid by her. In 1909 they were assessed to Kittie E. Dwyer and paid by the Idaho Trust Company. In 1910 they were assessed to

Kittie E. Dwyer. Dwyer located the entryman and later purchased the land for his wife, or in his wife's name. The defendant Kettenbach seems to have had nothing at all to do with the entry. The matter of making such an entry was first talked over between Kester and the entryman at the latter's home out in the country. There was some sort of a general promise by Kester, who seems to have been very friendly to the entryman, to give him assistance if he needed financial help when it came to making his final proof. A careful consideration of the entryman's testimony convinces me that he did not have any understanding, express or implied, by which he was to [277—34] sell the land to any person, and that no other person had any interest in the entry. The entryman apparently did feel under some moral obligation to give to the defendant Kester an opportunity to purchase, but such obligation involved only a recognition by the entryman that Kester favored him by loaning him a part of the money required for the final proof.

#### THE PEARL WASHBURN CLAIM.

This claim was initiated January 19, 1903, final proof was made April 16, 1903, and patent issued July 2, 1904. A mortgage upon the land was given on the day of final proof to the defendant Kettenbach, and recorded two days later. The entrywoman held the land about three years, and then, on May 23, 1906, deeded the same to one McGrane. McGrane deeded to Chapman on May 8, 1907, and Chapman deeded to the Clearwater Timber Company on June 7, 1907. The entrywoman did not testify,



and I find in the record little, if any, circumstantial evidence tending to impeach the validity of the claim.

### CLAIM OF BENJAMIN F. BASHOR.

This claim was entered May 21, 1903, and passed to final proof on June 17, 1903, patent issuing August 3, 1904. A mortgage was given to the defendant Robnett on the day of final proof, and recorded three days later, at the request of the defendant Kettenbach. The entryman transferred the land to the defendant Kettenbach by deed in April, 1906, the same being recorded at the request of the Lewiston National Bank April 21, 1906. I find that the defendant Kester knew nothing about the entry, and never had any interest in the land embraced therein. [278—35] For the circumstances surrounding the entry we are dependent almost entirely upon the testimony of the entryman and of the defendant Robnett. The entryman was at the time the assessor and tax collector of Nez Perce County. Robnett's testimony is to the effect that there was some general understanding that he (Robnett) would make provision for the necessary funds with which to secure title, and that he was to sell the land, and that the entryman was to realize from \$200.00 to \$250.00 net out of the transaction, and that Robnett was to have any surplus remaining out of the proceeds of the sale, after paying the entryman that amount. Even if it were deemed proper to give credence to the uncorroborated testimony of Robnett, and if it were not in conflict with that of the entryman, the testimony is not very clear or convincing as to just what



the arrangement was. If Robnett was to receive the surplus it would seem necessary to have some understanding as to the specific amount which the entryman was to realize; otherwise a dispute would arise after the sale was made as to how much the entryman was entitled to. But according to Robnett's testimony the net amount which the entryman was entitled to realize was left indefinite and uncertain. From the testimony of the entryman himself it is quite clear that he did not understand the arrangement to be such as related by Robnett. He held the claim for some time, and apparently acted upon the assumption that he had a right to convey to the one who would give him the highest price. He sold to Kettenbach because Kettenbach offered him a little more than he was offered by other persons. He realized no substantial profit from the transaction.

While the validity of this claim is not entirely free from doubt, from the evidence bearing directly upon the claim and from other facts and circumstances disclosed by the record, it is concluded that the actual facts are that Robnett [279—36] encouraged the entryman to take up a timber claim, with no specific understanding or agreement that he (Robnett) should have any interest in or control over the claim. It may very well have been expected from what was said and done that Robnett would not only assist the entryman in procuring the necessary funds, but would actively engage in an effort to sell the claim for the entryman after proof was made, the whole transaction being for the ben-

efit of both parties. Robnett would at least get a fee or a part of the fee of a locator, and there would be the further possible advantage to him of a commission or some sort of an interest in the proceeds of the sale of the land if he were successful in assembling and selling a considerable body of timber land. Clearly Robnett was not working in co-operation with, or for the interests of, the other defendants, and it is not easy to see why he would have insisted upon absolute control of the title. He was risking nothing. The money which was furnished to enable the entry man to make proof and pay his expenses did not belong to Robnett, and by procuring the entry to be made he was sure at least of a locator's fee, for he saw to it that the entryman borrowed enough money to cover not only the purchase price of the land, but the locator's fee and other incidental expenses. Moreover, there is no evidence, except that of Robnett himself, which is contradicted by the testimony of the defendant Kettenbach, that Kettenbach had any knowledge of the arrangement which he now testifies existed between him and the entryman. In other words, if it is held that Kettenbach is not an innocent purchaser, the finding must be based upon the uncorroborated testimony of Robnett, against the testimony of the defendant Kettenbach. Upon the whole, I feel impelled to find that the evidence sustains the charge neither of fraud in the entry nor of knowledge of any illegality in the entry on the part of the present owner, the defendant Kettenbach. [280—37]



**CLAIM OF DANIEL W. GREENBURG.**

The entry was initiated April 25, 1904, final proof was made July 15, 1904, and the patent issued December 31, 1904. The entryman conveyed to Kester and Kettenbach on August 15, 1904, by deed recorded January 24, 1906. There is little substantial proof tending to show fraud in the entry. The entryman was a newspaper reporter, and had in his own right a part of the necessary funds with which to acquire title. He borrowed about \$200.00 from the Lewiston National Bank, giving his note therefor, and transferred the land to Kester and Kettenbach about a month after final proof, for approximately \$1,100.00.

**CLAIMS OF GEORGE MORRISON AND EDWARD M. HYDE.**

The record upon these two claims is substantially the same. The entries were initiated March 30, 1903, final proof was made June 26, 1903, patents issued August 31, 1904, and the lands were deeded to Kester and Kettenbach June 26, 1903, the deeds being recorded August 10, 1903. Neither of the entrymen testified. Robnett had to do with both entries, and to substantiate the allegations of the bill the Government relies exclusively upon his testimony, both in relation to the charge of fraud in the entry and of bad faith of Kester and Kettenbach in purchasing from him. Kester disclaims all knowledge both of the entries and of the circumstances of the purchase, and Kettenbach denies having any knowledge of the circumstances of the entries or of any arrangement between Robnett



and the entrymen. It is therefore thought that the evidence is insufficient to warrant the cancellation of either entry. [281—38]

#### ENTRY OF WREN PIERCE.

This entry was made March 21, 1903, and final certificate issued June 17, 1903. Immediately after final proof the entryman executed a mortgage to the defendant Robnett, who transferred the same to the defendant Kettenbach. On May 31, 1904, Kettenbach purchased the claim, taking a deed from the entryman. The entryman was not produced as a witness. The defendant Kester apparently has never had any interest in the claim, and knows nothing about it. The charge of fraud in the entry rests upon Robnett's testimony alone, with substantially no corroborating circumstances. Robnett testifies that Kettenbach was advised of the alleged fraud before he made the purchase; this Kettenbach denies. It is thought the evidence is insufficient to warrant a cancellation of the patent.

#### ENTRY OF JOHN E. NELSON.

This entry was initiated February 24, 1903, passed to final proof May 22, 1903, and to patent August 3, 1904. The entryman executed a mortgage to Curtis Thatcher, who was acting as the agent for his mother, E. W. Thatcher, on May 22, 1903, for \$725.00. On May 18, 1908, the entryman executed a deed to E. W. Thatcher, reciting a consideration of \$1,060.00. The land was from time to time assessed to Nelson, and the taxes paid by the mortgagee. The Government relies almost entirely upon the testimony of the defendant Robnett. Here, as in the

case of some other entries, the testimony of this witness is not very clear as to just what the arrangement or understanding was. He testifies that he was to control the sale of the land after title was secured, but just how that control was to be exercised or what he was to get out of the transaction is not entirely clear. He testifies that his alleged illegal agreement with the entryman was made known to Thatcher. This Thatcher denies, and in material [282—39] respects the story told by the entryman is in conflict with the testimony of Robnett. Upon the whole, it is thought that the evidence is insufficient to warrant cancellation.

#### ENTRY OF VAN V. ROBERTSON.

This entry was made February 24, 1903, and passed to final proof May 20, 1903. Immediately after final proof the entryman executed a mortgage in favor of Robnett to secure a note for \$500.00. On September 27, 1904, the entryman executed a deed to the Lewiston National Bank. The testimony of Robnett as to the arrangement he had with the entryman is neither detailed nor clear. The defendant Kettenbach appears to have known nothing about the transaction, and the defendant Kester never had any interest in the entry. According to Robnett's testimony, he procured from the Lewiston National Bank, in which he was employed as bookkeeper, the funds with which to make the necessary advances to the entryman to pay the purchase price of the land, and immediately upon the execution of the note and mortgage the note was endorsed by Robnett and put in the bank, he (Robnett) taking credit



for the amount thereof. He testifies that Kester, who was cashier of the bank, knew of his alleged illegal agreement with the entryman; this Kester denies. It seems quite incredible that if Kester had been advised of facts disclosing the invalidity of the transaction he would have authorized or acquiesced in the use of the funds of the bank for any such purpose; apparently there was no personal interest in the transaction to blind him to the obligations of his trust. To be sure, friendly relations existed between Robnett and Kester, but so far as appears they were only such relations as might exist between young men who had grown up together, and had been associated by reason of a common employment. If Kester believed the title to be good, he might, out of regard [283—40] for Robnett, and to enable him to secure the location fee which accrued to Robnett out of the entry, have yielded to the latter's request for help, the peril under such conditions being very slight. But it is not easy to believe that, without hope of profit either to himself or to the bank, whose interests it was his duty to protect, Kester would have authorized the abstraction of \$500.00 of the bank's funds to be loaned upon real estate the title to which he was advised was invalid by reason of the fraud of the entryman. Upon the whole, it is thought the evidence is insufficient to warrant a cancellation of this patent.

#### ENTRY OF SOREN HANSEN.

This entry was made February 26, 1903, final certificate was issued June 5, 1903, and patent August 4, 1904. It seems that the entryman has made three



several deeds, one on February 7, 1906, one on May 16, 1908, and one on March 5, 1909, as a result of which it is not clear who is at present the real owner, but in the view I have taken of the evidence this feature is not of great importance. I am convinced that the entryman, who testified upon behalf of the Government, desired to be entirely frank, and stated the facts as he understood them and remembered them, and, according to his testimony, the entry should be held to be valid. Robnett's testimony touching this claim is very similar to that offered in relation to a great many other claims, and is, in material respects, in conflict with that of the entryman. [284—41]

#### ENTRY OF DRURY M. GAMMON.

This entry was initiated May 12, 1903, passed to final proof August 19, 1903, and to patent September 9, 1904. A deed was executed to Robnett October 9, 1903, and by Robnett a transfer was made to the Lewiston National Bank on November 25, 1904. The bank transferred to the Idaho Trust Company, the present holder of the legal title, January 8, 1910. The testimony of the entryman is extremely conflicting and unsatisfactory. In one breath he gives one version of the transaction, and in the next breath he states facts entirely irreconcilable therewith. Considering all of the testimony together, I am inclined to think that at the time the entry was initiated there existed between him and Robnett an unlawful understanding as to what disposition should be made of the claim when title was secured.

There remains the question whether or not the Lewiston National Bank, in taking a transfer, was an innocent purchaser, for value. Robnett's testimony is to the effect that he advised Kester, who was at the time cashier of the bank, of the unlawful arrangement between him and the entryman. This is denied by Kester, and he explains how it happened that the bank became the owner of the land. It is not seriously contended that Kester originally participated in the unlawful transaction between Robnett and the entryman, and apparently at the time he testified he had no interest in the result of the litigation so far as this entry is concerned. There are no general considerations, therefore, strongly tending to impeach or weaken his testimony, and in the absence of special reasons to the contrary I think credence must be given to his version of what occurred in preference to that of Robnett. It must therefore be held that the bank took the title without notice of its infirmity. [285—42]

#### CLAIM OF CARRIE D. MARIS.

This entry was made on July 15, 1902, and final receipt issued November 21, 1902. On June 2, 1903, the entrywoman conveyed by deed to Robnett, and on July 12, 1906, Robnett executed a deed to the defendants Kester and W. F. Kettenbach. I am inclined to give credit to the testimony of the entrywoman, and, according to that testimony, an agreement was entered into between Robnett and herself, before the entry was initiated, in violation of law, as a result of which the entry was invalid. The title is now in Kettenbach and Kester, and the remain-



ing question is whether or not they are innocent purchasers for value. It is not contended that either Kester or Kettenbach participated in the proceedings by which the title was procured from the Government. Robnett furnished the money to the entrywoman to make final proof, borrowing it from one Sullivan. It will be observed that Robnett held the title for practically three years before executing the deed to Kester and Kettenbach. Kettenbach personally had nothing to do with the purchase, and both Kettenbach and Kester deny Robnett's statements to the effect that they were advised of the arrangement between him and the entrywoman, under which the entry was made. In addition to the general considerations hereinbefore explained, tending to impeach and cast discredit upon the credibility of Robnett's testimony, it appears from the record that as late as July 1, 1909, he made an affidavit relative to this claim in which he expressly stated under oath that he had no agreement with the entrywoman prior to making final proof, and further, that Kester and Kettenbach knew nothing about the land or the acquisition of the title thereto for a long time after final proof. In his testimony given in the present case he leaves the impression that Kester wanted the claim, and that he sold to him as a favor, but it is abundantly shown by the testimony of the entrywoman that Robnett had made many efforts to sell the land, without success, [286—43] thus corroborating Kester's version of the transaction. Kester's testimony is to the effect that he knew nothing about the claim until one day, shortly before he pur-



chased it Robnett came to him at the bank, and, calling his attention to the claim, advised him that he had an offer of \$1,500.00, but that he had been holding the land for \$1,600.00; that he thought the claim was worth \$1,600.00, and wanted to know if Kester didn't desire to purchase it. Kester took the matter up with Dwyer, who went out and looked over the land, and reported that it was worth \$1,600.00, and thereupon Kester advised Robnett that he would take the land for \$1,600.00, and the transaction was closed upon that basis. As already stated, it is impossible to read the testimony of the entrywoman without being impressed with the fact that, for a long period of time before the sale to Kester and Kettenbach, Robnett had been making strenuous efforts to dispose of the land, but in vain. Apparently the highest offer he had ever received was \$1,500.00. Under these circumstances it seems quite incredible that he, as the owner of this land, and being anxious to sell it and get as much as possible for it, and having been unsuccessful in selling it to strangers, would go to Kester and Kettenbach and lay bare the facts disclosing the invalidity of the title, for the purpose of inducing them to pay \$100.00 more than he had ever been offered for the land. Only great simplicity of character together with a highly sensitive conscience would account for such an unusual proceeding, and it is hardly necessary to add that Robnett seems to have possessed neither of these qualities in a very high degree. In this particular case he does not appear to have had any scruples against deceptively withholding from the

unsophisticated entrywoman a portion of her share of the proceeds of the transaction. [287—44]

My conclusion is that Kester and Kettenbach were not aware of any illegal understanding or agreement between Robnett and the entrywoman, and the purchase was made by Kester in good faith, and for value, in the ordinary course of business.

#### CLAIMS OF FRANCIS M. LONG, BENJAMIN F. LONG AND JOHN H. LONG.

Francis M. Long, father, and Benjamin F. Long and John H. Long, his sons, made three several entries on March 26, 1903, and in each case final receipt was issued June 18, 1903. The three locations were made through Robnett, who also arranged for funds with which to pay for the lands. Benjamin F. Long knew very little personally about the arrangement, having depended upon his brother, John H. Long. It seems that Robnett, with the assistance of Knight and Benton, had found several claims, and was arranging to locate people thereon. He had some understanding with one Curtis Thatcher to loan the money to the entrymen, taking mortgages as security, and it is quite clear from various parts of the record that Thatcher was to have a bonus, as it was called, in addition to the interest specified in the note, as an inducement to him to make loans upon timber claims, the bonus in some cases amounting to as much as \$200.00 a claim. At page 1700 of the record, in speaking of the claim of John H. Little, Robnett testified to the effect that the money for the Little claim was to be furnished "by Curtis Thatcher, at that time, as he agreed to



make a number of loans on claims, ten in number.” And it is to be inferred that the Long claims were included in the ten thus referred to. W. F. Kettenbach, in explaining his connection with the so-called Robnett entries, and referring especially to the Little claim, states that, as he understood, Robnett had agreed to loan the money, but had apparently been disappointed in getting it from Thatcher, with whom Robnett had arrangements [288—45] made, Thatcher having failed him “at the eleventh hour.” Thereupon, according to Kettenbach’s testimony, Robnett came to him, and after he had looked over the estimates which Robnett had of the timber on the several claims Kettenbach furnished the money to enable the entrymen to make final proof. Kettenbach further testifies that he never knew anything about the claims until just at the time the entrymen had either proved up or were going to prove up. Kettenbach testifies: “Robnett first approached me on the proposition of letting the entrymen have the money, I think it was the day they proved up, or the day after, I am not sure; but they had either nine or eleven claimants that were wanting to borrow money for the lands, and I looked over the report on all of them and finally decided to take them” (that is, the loans). Apparently, in accordance with this arrangement or understanding, between W. F. Kettenbach and Robnett, upon the day of final proof, the necessary funds were procured by the Longs at the Lewiston National Bank, through Robnett, and each of the three entrymen executed a mortgage upon the day of final proof to secure a note



given to Robnett, two of the mortgages being each for the sum of \$728.75, and one for \$710.00. It is not entirely clear just what entered into the transaction to make up these several amounts. It required approximately \$400.00 to cover the purchase price of a claim, and Robnett was paid a location fee, and in addition to that apparently there was a bonus, and it is not improbable that the entrymen were required to give the note and mortgage for a sum considerably in excess of the money they actually procured. Whether this bonus went to Robnett or to Kettenbach, or was divided up between them, or just how it did figure in the transaction, is perhaps not of vital importance. Upon the execution of the notes and mortgages, the notes were endorsed by Robnett without recourse, and turned over to Kettenbach, the endorsement of the note, of course, carrying the mortgage with it. Thereupon, the mortgages were promptly filed for record by Kettenbach. [289—46] About a year later,—to be exact, on July 23, July 25, and August 9, 1904,—the entrymen executed their several deeds to Kettenbach, conveying to him the lands. Robnett seems to have had little, if anything, to do with the sale to Kettenbach. The entrymen apparently having concluded that they could not sell the lands for very much more than the mortgage indebtedness amounted to, decided to sell to Kettenbach if he would give them a small amount and cancel their notes and mortgages. This was agreed to by Kettenbach, and the deeds were executed accordingly and the mortgages satisfied.

It is not entirely clear from Robnett's testimony,

if that were given full credence, that the arrangement between him and these entrymen was in violation of law, and, taken in connection with all the other testimony, it is abundantly shown, I think, that the entrymen entered into no unlawful agreements or understandings. While the three entrymen differ as to some details, substantially all of them testify to about the same arrangement, and the testimony of John H. Long fairly illustrates that of the others. He says: "The proposition he (Robnett) made, as near as I can remember, was that he would locate me on a timber claim, and he would loan me the money with which to prove up with, and he would charge me \$125.00 for location fee, I believe, something like that, and I was to pay \$200.00, I believe, for the use of this money and the risk, as he explained it, in making this loan. I think he said he had no interest in it excepting that he must have a little bonus, as he called it, or something like that, to insure him a little something for his trouble and for the man that furnished the money." Later on, in response to an inquiry as to what he was to do with the land after final proof, he testified: "Well, there was nothing said as to what we was to do with it, any more than he said he might be able to sell it and realize about \$800.00 on it. [290—47]

"Q. Did he guarantee you so much? A. No, he said, 'I may sell it for \$800.00.'

"Q. Was he to have the right to sell it for you? A. No, not particularly; anybody had the right to sell it."

Kettenbach's explanation of his connection with



the transaction is corroborated by the testimony of both J. H. Long and B. F. Long, and I think it is clear that he simply loaned the money. The "bonus" feature of the transaction may be obnoxious to the usury laws of the State, but in no wise affects the validity of the entry. Under the circumstances, the fact that Robnett endorsed the notes without recourse is unimportant. It appears that some of the notes at least were later endorsed by Kettenbach in the same way. It is quite clear, I think, that the notes were taken in Robnett's name merely as a matter of convenience and for the use and benefit of Kettenbach, who was furnishing the money. The transaction was in no wise concealed. The mortgages were at once placed on record by Kettenbach. That Robnett did not have any control over the land or any interest in it appears from the undisputed fact that the entrymen made efforts to sell to timber purchasers, and entered into agreements to sell, independently of Robnett; and that there was no understanding originally that either Robnett or Kettenbach should become purchaser of the land, that is, that the mortgage was not merely a device for covering up a transaction of transfer, appears from the testimony of J. H. Long, at page 789, where he explains that when the mortgage became due Kettenbach notified him of his ownership of the mortgage and note, and requested that he come in and settle. Long talked with some of his friends about it, who advised him that he had better get rid of the mortgage, for Kettenbach might undertake to enforce the payment of it by resorting to other property owned



by Long. He names one person with whom he talked. He thereupon wrote to Kettenbach, saying that he had seen the land [291—48] and that he had concluded that if Kettenbach would repay him for the money he had actually spent he would give him a deed for the land. The proposition was finally accepted, and Kettenbach paid him about \$30.00 and took his deed and cancelled the note and mortgage.

#### CLAIM OF ELLSWORTH M. HARRINGTON.

In many of its features the record in this claim is very similar to that relative to the Long claims just disposed of. The entry was originally made about the same time that those claims were entered, and final receipt issued June 15, 1903, three days before final proof in the Long claims. As in the case of the Long claims, the entryman, soon after making final proof, executed a note, secured by mortgage, in favor of Robnett, for \$729.75. The amount of the mortgage probably represents the \$400.00 required for the payment of the purchase price of the land, a location fee of \$100.00 or \$125.00, a bonus of substantially \$200.00, and some other incidental expenses. The entryman conveyed to the defendant W. F. Kettenbach by deed on May 8, 1906, the consideration recited therein being \$1,000.00. The entryman is Robnett's brother in law, and the entry was made with the assistance of Robnett, who testifies that the understanding was that he should have the disposal of the claim, and that Harrington was to deed to any person designated by him, Harrington to realize at least \$300.00 over and above his expenses. According to Kettenbach's testimony, he

took the mortgage and finally purchased the claim practically under the same circumstances as are shown to have surrounded the mortgages upon, and the purchase of, the Long claims. Harrington himself testifies, and his statement is not disputed, that he realized clear out of the claim \$299.40, and so far as appears Robnett got nothing except the location fee and possibly the bonus or a part of the bonus [292—49] included in the mortgage note. It is quite clear that Kettenbach had no understanding before or at the time he took the mortgage that he was ultimately to procure title to the land, for efforts were made by Robnett and Harrington to sell to other parties, and, being unsuccessful, the entryman sold to Kettenbach.

The only evidence relative to the regularity of the entry is found in the testimony of Robnett, already referred to, and that of the entryman. The entryman's version of the arrangement between himself and Robnett is materially different from that of Robnett, and, if true, there was no unlawful or improper agreement or understanding. The entryman appears to have testified with considerable candor. In reply to questions put to him by counsel for the Government, he testified that prior to making the entry there was nothing said as to what he would make out of the transaction or about the sale of the land. He said:

“Q. Was anything said about what the land was worth? A. There may have been; I don't remember; I think there was though. I think it was in the neighborhood of \$1,000.00; I ain't positive though.



“Q. Now, what was said? Was it said that you could get \$1,000.00 out of it? A. Well, no. He (Robnett) may have said it was worth in that neighborhood, of \$1,000.00; there was nothing said positive that it was.”

\* \* \* \* \*

“Q. Now, what was there in it for him? A. Well, he was to get a commission out of it for selling the claim, I think.

“Q. And he was to sell the claim? A. No, he wasn't to sell it. If he did sell it he was to get a commission for selling it. There wasn't no agreement that he was to sell it.

“Q. You mean you didn't have any written agreement? A. No, nor no verbal agreement in that way, not positive. He was dealing in timber claims, and if he had a chance to sell it he had my permission to sell it.

“Q. That was the original understanding, was it not? A. I don't think there was any exact understanding made about it. It was a kind of a—I don't know whether you would call it a mutual agreement or not; we were brother-in-laws, and naturally, as he was in the timber business, he would handle my claim for me.

“Q. And you expected that, didn't you? A. Yes, sir.

“Q. And you understood the first time you talked with him about it that he was to handle it for you? A. There wasn't anything said positive that he was or wasn't. I don't think it was mentioned at all.”



I conclude that the record does not sustain the contention either that the entry was invalid or that Kettenbach, at the time he made the purchase, had notice of any alleged invalidity.

#### ENTRY OF JOEL H. BENTON.

Final receipt in this entry issued on November 21, 1902, and on December 29, 1902, the entryman conveyed to Robnett, for the specified consideration of \$1,600.00. The deed was recorded April 27, 1903. On July 8, 1907, Robnett conveyed to Elizabeth White, and on September 14, 1907, Elizabeth White conveyed to the Clearwater Timber Company, the present holder of the title. The evidence pertaining to the entry and the several transfers is voluminous. The entryman was called as a witness upon behalf of the Government, and his examination furnishes a striking example of how completely the rule of evidence laid down in *Putnam vs. United States*, 162 U. S. 687, hereinbefore adverted to, was ignored. And as a consequence of the methods resorted to for compelling or inducing the witness to testify in a certain way, it is extremely difficult justly to weigh his evidence as a whole. On some important matters it is quite impossible to determine whether the witness testified as he did because he felt under compulsion to be consistent, or because he desired only to speak the truth. Upon the whole, I would be inclined to hold the entry for cancellation were it not for the rights of the Clearwater Timber Company as an innocent purchaser. While the point is not entirely free from doubt, it is thought that this company did not have such knowledge of the circum-

stances under which the entry was made, or such notice of the claims of the Government, as to put it upon inquiry. It is true the purchase was made after much publicity was given to the criminal prosecutions against Robnett, Dwyer, Kester and W. F. Kettenbach, and [294—51] it is also true that one of the agents of that company testified at one of the criminal trials, but it does not appear that he or any other officer of the company was aware that this particular claim was involved in the criminal prosecutions, or that it was called into question by the Government. The witness Robnett testifies that the transfer was made by him to Elizabeth White upon the suggestion of the defendant William F. Kettenbach that the Timber Company would not buy the claim from him, but would buy the same from Elizabeth White. This is denied by Kettenbach, but if we assume it to be true, such a statement on the part of Kettenbach is not competent as proof against the Timber Company, and there is no evidence that any resident agent in Idaho of the Timber Company had any knowledge at the time the agreement to purchase was made that the title came through Robnett, or that he had ever had anything to do with it. The mode of procedure of the Timber Company in purchasing timber lands was such that the resident agent who conditionally contracted for the purchase of timber claims would not necessarily have knowledge of the chain of title. The examination of the title was delegated to an officer or agent of the company who, so far as the record shows, may have had little, if any, knowledge of the charges which were being pre-



ferred against Robnett and others by the Government. In view of all the circumstances, it is thought that the relief prayed for relative to this claim must be denied.

### CLAIM OF JOHN H. LITTLE.

As has already been indicated in the discussion of the Long claims, this entry is in some of its features similar to those. It was made March 20, 1903, and final proof was offered June 15, 1903. Immediately after final proof a mortgage was executed to Robnett for \$760.00, and, like the Long and [295—52] Harrington mortgages, was endorsed to Kettenbach and by him recorded. Kettenbach purchased and took title by deed dated October 24, 1904. The testimony of Kettenbach relative both to the matter of the mortgage and to his purchase of the claim is like that touching the Long and Harrington claims. Robnett had to do with the entry of this claim also, and his account of what occurred is in many particulars similar to his account of the Harrington and Long claims. Upon some features, however, he is not as clear or explicit. He does not testify that he was to have control of the land after title was procured, or that Little was under obligation to convey to a purchaser whom he might designate, nor is his testimony as to what Little was to get out of the claim consistent. In reply to a question put to him by counsel for the Government, he said: "I seen Mr. Little and told him that we had a number of claims up there that I was locating people on, and wanted to know if he didn't want to take up a claim, and he said that he did, but he hadn't the money to go ahead, and I told



him I would arrange for that and also to pay the expenses, and that I had deals on for the disposing of the timber, and that I could get him from \$150.00 to \$200.00 out of the claim." A moment later, when he was again asked by counsel for the Government to state the arrangement, he testified that he said to Little: "I would get him either \$200.00 or \$250.00 for his right, that would be what he would make out of it if the deal went through. If it didn't I thought there was other deals whereby I thought I could handle it and get him that amount of money." As already noted, Robnett does not testify that he was to control the sale of the land, and if he was to have the control and disposition of it, it would be strange if the amount which the entryman was entitled to realize was left in such an indefinite status. From Robnett's testimony it appears that when the arrangement was made [296—53] for this entry the money for the purpose was to be procured from Curtis Thatcher, who advanced a small amount for the payment of preliminary expenses, but then, for some reason, did not carry out his agreement. Upon initiating the entry, and before final proof, Little gave a note for the location fee, amounting to either \$125.00 or \$150.00, according to Robnett's testimony. This was afterwards taken care of by the money procured from Kettenbach. According to Robnett's testimony, which is in harmony with that of Kettenbach and Little, Kettenbach originally had no interest in the entry, and had no expectation of getting the title. He (Robnett) testified:

"Q. Now, what became of that claim, do you know?

A. It was finally deeded to Mr. Kettenbach.

“Q. Do you remember the transaction in connection with that, the conversation relative to it? A. Why, the deals failed to go through that I had at the time of the location, and of course the mortgage came due, and Mr. Kettenbach told Mr. Little that he would have to either pay the mortgage or deed the claim, and he deeded the claim.”

Robnett testifies in general language that Kettenbach and Kester knew of the arrangement he had with Little, but he does not say what he told them or in his conversation with them what arrangement he claimed to have had with Little. The entryman appears to have testified frankly, and as to his arrangement with Robnett he said:

“Q. Now, what were you to do with this claim after you took it up, what was your arrangement? A. Well, the understanding was that Robnett was to find me a buyer for the claim. He guaranteed to sell me the claim—to sell the claim for me.

“Q. Did he tell you when he would sell it? A. Why, he said the chances were favorable for an early sale—a verbal agreement was all.

“Q. Did he tell you whether or not he had anybody in mind or was assembling claims? A. No, not at that time he didn't, not until after we had proved up, before he made any statement in regard to assembling claims.

“Q. Now, did he tell you how much you were to get out of your claim? This is the first talk you had with him before you filed? A. Well, when we came back he told me what a valuable claim I had got. I



don't remember the amount, but he discussed it, and I felt very jubilant over the fact that I had got a good claim. I had taken his word for it all."

If the entryman had an agreement with Robnett by which [297—54] he was to get only a small specified amount out of the claim, his state of mind upon being informed that he had a good claim is not easily explained. He would have no very great interest in the nature of the claim if he was guaranteed so much and was to get only so much out of it. The entryman further testifies that Robnett disappointed him in not getting a purchaser for the claim, and that Kettenbach was urging the payment of the mortgage and was threatening to foreclose. He went to Kettenbach and tried to induce him to purchase the claim. Kettenbach told him he was not buying timber, and advised him to try to sell to someone else, but finally took the claim and paid him a trivial amount in excess of what was due upon the mortgage.

I conclude that the evidence does not support the charge that there was any fraud in the original entry, or that Kettenbach at the time he purchased had knowledge of any alleged fraudulent agreement between the entryman and Robnett.

#### ENTRIES OF BERTSELL H. FERRIS AND GEORGE RAY ROBINSON.

These two entrymen were closely associated, and made their entries at the same time and practically in the same way, and therefore the two claims may be discussed together. The entries were made March 31, 1903, and passed to final proof June 26, 1903. Upon the day of final proof each entryman executed



a note and mortgage to Robnett for \$728.75, and the mortgages were turned over to W. F. Kettenbach and recorded by him, as in the case of other entries referred to with which Robnett had to do. Ferris conveyed to W. F. Kettenbach by deed dated January 16, 1907, and Robinson conveyed to Kettenbach by deed dated October 16, 1905. In these cases, as in some others in which Robnett was instrumental in locating the entrymen, he had arranged to procure loans for the entrymen from Curtis Thatcher, who apparently made advances for preliminary expenses, and then failed to furnish the money necessary for [298—55] making final proof. Robnett and Ferris first discussed the entry of a timber claim, and, through Ferris, arrangements were also made for an entry by Robinson. The understanding was that the entrymen were to pay their personal expenses, and Robnett was to procure the money with which to make final proof. It is abundantly shown, I think, that there was no intention on the part of the entrymen until long after final proof to convey to Kettenbach, and that there was no expectation on the part of Kettenbach when he let Robnett or the entrymen have the money that he would secure title to the lands. The entrymen, as appears from the dates of the deeds, held the lands a considerable length of time, and transferred them to Kettenbach because they were unable to do any better with them. Ferris realized nothing out of the transaction, and apparently lost some small personal expenses. Robinson netted approximately \$70.00. It is also plain that Robnett felt under no obligation to purchase the land and

exercised no real control over the sale thereof. The understanding, as I gather it from all of the evidence and the circumstances disclosed by the record, including the statements of the several parties, is that Robnett, in encouraging these men to make entries, led them to believe that he would be able to negotiate a sale of the lands after title was secured, so that they would realize a substantial profit, and in that belief they entered the lands and assumed the mortgage obligations referred to. Robnett doubtless expected to receive a commission for his services if he was successful in selling the lands, and the entrymen doubtless expected that he would be compensated, but it was not understood that he had any interest in the lands or could control the sale. In case an offer to purchase had been made to one of the entrymen it is to be inferred he would have given Robnett an opportunity to take the land at the offered price [299—56] before making a sale to a third party, but he would not have recognized any right on the part of Robnett to interfere with or prevent an independent sale, or to claim any compensation in case such sale was made. By counsel for the Government the question was asked of one of these entrymen why he supposed Robnett would go to the trouble of locating him and procuring a loan for him if he was not to have any interest in the entry, and the entryman could give no satisfactory answer, but it must be borne in mind that a charge was being made of from \$125.00 to \$150.00 as a location fee for each one of these entries, and Robnett reaped the benefit of a part of that. In each one of these cases also it



appears that the mortgage that was given covered a bonus of about \$200.00, part of which at least it is not improbable accrued to the benefit of Robnett, and, as already indicated, doubtless Robnett anticipated that if he was instrumental in enabling a number of persons to secure title to claims he could afterwards assemble the lands thus entered, and, as agent, sell them for the owners, thus enabling him to receive a considerable sum as commission for making the sale. He could, with considerable confidence, rely upon his ability to get options from the various entrymen after they had procured title, at prices not greatly in excess of the amount which it had cost the entrymen to get the title; in other words, the entrymen would be content to make a comparatively small profit. Such options were procured in these cases, and in some others. It turned out, however, that Robnett was over sanguine as to the value and salability of the lands. As it was put by one or two of the witnesses, "the bottom dropped out of the sale of timber lands in that country." The witnesses sometimes speak of consulting Robnett before selling or contracting to sell. The reason for such consultation is not always fully disclosed, [300—57] but in the case of Robinson, for instance, it appears that one Emory came to him for an option, and he stated that he would first have to consult Mr. Robnett, but it further appears that he had to consult Robnett because he had theretofore, and after final proof, given to him at least one, and possibly two or three, different options.

Upon the whole, I conclude that there was nothing



unlawful in the relations between either of these entrymen and Robnett or any other of the defendants, and that the entries were valid.

#### CLAIM OF EDGAR H. DAMMARELL.

The entry was made April 25, 1904, and passed to final proof July 12, 1904. The entryman executed a deed to Jackson O'Keefe on July 26, 1904, and on July 30, 1904, O'Keefe, by quitclaim deed, conveyed to Kester and Kettenbach. The former deed was recorded January 18, 1906, and the latter January 31, 1906. Later, on December 31, 1909, Kester and Kettenbach deeded to the Idaho Trust Company. The claim is one of a group of six different claims entered at the same time and in the record referred to as the O'Keefe group, owing to the fact that Jackson O'Keefe, one of the entrymen, participated in the proceedings by which the title was procured from the United States and transferred to Kettenbach and Kester. The names of the other entrymen are Edgar J. Taylor, Charles W. Taylor, brothers, Joseph H. Prentice, Dammarell's cousin, Jackson O'Keefe, and David S. Bingham. O'Keefe was at the time associated with Kester in an irrigation project at Cloverland, Washington. The two Taylors were his nephews, and other of the entrymen were employed by, or friendly to him. They all, except Bingham, went up to the timber together, and, under the guidance of the defendant Dwyer, who acted as locator, [301—58] selected their claims. With unimportant exceptions, the necessary funds to pay their expenses and to pay the purchase price of the land were arranged for by O'Keefe, and procured

at the Lewiston National Bank, of which Kettenbach was at the time president and Kester the cashier. In some of their features the claims are very similar, but they all differ in their details. Referring particularly to the claim now under consideration, the entryman, who was called as a witness by the Government, in testifying as to his arrangement with O'Keefe, said, on direct examination:

“Q. Well, wasn't anything said at that time about the disposition of the land? A. No, nothing said that I remember of. Of course I knew that you couldn't dispose of the land until you had a receiver's receipt.

“Q. Yes, I am not asking about disposing of it, but I mean a tacit understanding or agreement as to what you should do after you got your final receipt? A. No, sir.

“Q. There was nothing said whatever?

“A. Nothing said whatever.”

And upon being interrogated as to the relations which existed between him and O'Keefe, and as to why O'Keefe should take any interest in him and assist him in getting the necessary funds with which to take up and pay for a timber claim, the entryman testified that he had bought some land from O'Keefe, a part of the purchase price of which he still owed, and then replying to questions put to him directly by counsel for the Government, he testified:

“Q. Mr. Dammarell, I will ask you whether or not, when Mr. Taylor spoke to you, it wasn't your understanding that in accepting the money that Mr. O'Keefe had to advance you you were to take up this



claim and convey it to him or to whomsoever he would suggest?     A. No, sir.

“Q. I will ask you if you had any reason to believe that Mr. O’Keefe had to advance you all of this money when there was nothing in it for him?

“A. I believe that Mr. O’Keefe would have advanced that much money to me; we were friends.

“Q. That he was just interested enough in you to put up this money for you?     A. Yes, sir, I think so.

Upon cross-examination he testified:

“Q. Now, Jackson O’Keefe was a good man, was he not?     A. Jackson O’Keefe was a good man.

“Q. Was always willing to help his friends and neighbors?     A. Too much so. [302—59]

“Q. And you believe that he would have furnished you that money or he would have furnished his nephews that money willingly, if they had had an opportunity to use it in that way?

“A. Yes, sir, I believe he would.

“Q. And you don’t believe he would have asked any compensation for it, do you?

“A. As a friend and as a man of poor business management, I don’t think he would.”

Upon being asked to explain why he deeded to O’Keefe so soon after making final proof, he testified, on direct examination, that he had a family, that he had left a good position in the east, and had come west and located on 160 acres of dry land, that he had found it more difficult to maintain his family while improving the land than he had expected, that in entering the timber land he had hoped to make some money out of it, that he had a friend in the east



who had told him that any time he (the witness) needed money to let him know and he would make him a loan, and that he had at first expected to get the money from this friend with which to take care of his entry, but that he had made an investment for him at Cloverland which was not turning out well, and for that reason he didn't like to ask him for a loan; furthermore, that he (the entryman) had incurred some bills which were worrying him, and that finally, after thinking the matter over, and after hearing a good deal about forest fires, he concluded that it would be best for him to sell the claim. He talked the matter over with O'Keefe, but O'Keefe encouraged him to hold on to this land, suggesting that it would be a good proposition, and that it would be satisfactory to him (O'Keefe) if he (Dammarell) could get the money somewhere else, and upon cross-examination, further referring to the matter of sale, and as indirectly bearing upon the question as to why the deed which he gave was not placed on record, he said:

“Q. And did he not tell you when you wanted to sell it to him and when he did decide to buy it that he would give you \$700.00 for it, or \$150.00 over and above the fee?

“A. I believe that was the true words, which netted me about \$100.00 or \$150.00. [303—60]

“Q. Did he not also tell you that if you had an opportunity to sell it for more money or could redeem the land within a year by paying him the money back that he had paid you that you could do so?

“A. Yes, sir, he did.

“Q. That was your understanding?

“A. That was my understanding.

“Q. When you sold it to him?      A. Yes, sir.”

There are some circumstances disclosed by the record tending to support the theory of the Government, that the entry was made in pursuance of an understanding between the entryman and O’Keefe, and, through O’Keefe, with Kester and Dwyer, that the land should, upon passing to final proof, be deeded to Kettenbach and Kester for a fixed amount. Unquestionably O’Keefe got the money at the Lewiston National Bank for the entrymen, and it is wholly probable that the defendants Kettenbach, Kester and Dwyer knew that it was being furnished for the purpose of paying the expenses of, and making final proof upon, the entry. The explanation by the defendants of the arrangement by which the money was furnished to O’Keefe is wanting in detail, and is far from satisfactory, but most of these suspicious circumstances, together with the testimony of Robnett, relate more to the conduct of O’Keefe and the defendants, and their relations with each other, and what they did and said, than to the conduct of the entrymen or their relations with O’Keefe or anyone of the defendants. Were a case of fraud in the entry shown it might very well be concluded that the defendants, if they did not participate therein, at least had knowledge thereof, or were put upon inquiry relative thereto, by reason of their dealings with O’Keefe. Notwithstanding these suspicious circumstances, I have been unable to avoid the conclusion that the entryman was frank in his testimony,



and endeavored to tell the truth and state the facts as he understood them and remembered them, and that, so far as he was concerned at least, he did not, when he entered the land and made final proof, have the understanding [304—61] that he was under any obligation to transfer the land to O'Keefe or any of the defendants, or to any other person, or to sell it for any specified consideration. In other words, he made the entry with the impression that his only obligation was to reimburse O'Keefe for the moneys advanced to or for him in paying the expenses incident to securing title. That being the case, it is not apparent how the patent could properly be set aside even if it were found that the defendants advanced the money to O'Keefe, or advanced it to the entryman through O'Keefe, with the hope, or even the expectation, that they would be successful in securing the claims. In considering whether or not the entry was fraudulent, the vital question relates to the attitude and understanding of the entryman himself, and if he is free from culpability the validity of the claim is not affected by the hope or expectation of third parties. O'Keefe was doing business with the Lewiston National Bank. He was associated in a business enterprise with Kester personally. Kester and Kettenbach were associated together, and Dwyer was employed by them in connection with their timber transactions. If the close relations existing between O'Keefe and Kester and Dwyer and Kettenbach are borne in mind, it is possible to explain, consistently with the theory of innocence, the circumstances surrounding the furnish-



ing and disbursement of the moneys in connection with the entry and proof upon these claims, and the payment of the location fee, but even if the other view be taken, and it be concluded that a common design on the part of Kester, O'Keefe and Dwyer is thus shown unlawfully to acquire title to timber lands, their purpose or expectation could not affect the validity of the entry so long as the entryman himself did not lend himself to such purpose or design, but did only what was permissible under the law. [305—62]

My conclusion upon the whole matter is that the entryman acted innocently and made no agreement and had no understanding to sell the land to anyone for any specified sum, and that O'Keefe was actuated both by a feeling of friendliness to the entryman and by the hope, if not the expectation, that sooner or later Kester and Kettenbach would be able to acquire title to the claim, and that he would receive a commission or compensation in some other form, and that Kester, by reason of his business relations with O'Keefe and his hope of securing title to the claims sooner or later, permitted O'Keefe to draw from the funds of the bank in excess of the credit which would ordinarily be extended, and that Dwyer, by reason of his relations to Kester and Kettenbach, knew that his location fees would be ultimately settled for in connection with the adjustment of the loans to or for O'Keefe when the latter made final settlement with the bank, and that therefore the payment by the entryman was a mere formality.

## ENTRY OF JOSEPH H. PRENTICE.

Much that has been said concerning the Dammarell entry is applicable to this claim. The entry was made April 25, 1904, passed to final proof July 11, 1904, was deeded to O'Keefe July 25, 1904, and by O'Keefe a quitclaim deed was executed to Kester and Kettenbach July 30, 1904. The deeds were recorded together with the Dammerell deeds. Speaking of his understanding with O'Keefe, the entryman testified that the matter of taking up a timber claim was first discussed with him by one of the Taylor boys, and following the conversation, he (Prentice) went to see O'Keefe. O'Keefe confirmed the statements made by Taylor, saying: "Yes, that is right; I will loan you the money and take your note for everything, your straight note for a year for the filing money, [306—63] and the proving up money, and the current expenses going up to see the timber, and also to pay the locator. I said, 'Do you think I can ever sell it?' and he said, 'Yes, you can sell it. In case you get tired of the deal, I will give you \$150.00 over and above all expenses.' " That was some time before any of the parties went up to see the land. He further testified that there was some conversation to the effect that if, when the year was up, he (Prentice) could not take up the note, he could be sure to get \$150.00 at any rate. The claim made by him that there was no understanding that he was to take \$150.00, or was to get only \$150.00 out of the transaction is confirmed by an incident which he seems to have remembered very clearly, and which it is hardly to be supposed is a mere fab-



rication. It seems that the land he entered, together with other lands, first became subject to entry on April 25, 1904, and there were at the local land office a great many applicants, as a consequence of which a line was formed, in which there were a large number who expected to file upon claims. Prentice had a position near the head of the line, and, while waiting for the hour to arrive for making filings, someone lower down in the line offered him \$500.00 for his place. The offer was declined, but Prentice stated when on the stand that he had often been sorry since that he had not accepted it. Upon being asked by counsel for the Government why he had not accepted it, he answered:

“A. Well, I thought I could make more out of it.

“Q. Wasn't it your understanding that you were to get \$150.00?

“A. I knew I could get that, but I never promised that I would sell it for that.

“Q. Didn't you feel under any obligation to Mr. O'Keefe?

“A. No, sir, I did not, because I had given my note.

“Q. But you hadn't given any note then.

“A. No, but I knew I had to. I was negotiating the money from my brother in law in the east. My intention was to keep that claim for a while at least.”

Notwithstanding this alleged intention upon his part, it appears that he sold his claim very soon after making final proof, and in explanation of that fact he testified:



“A. I [307—64] will tell you how that come along. I owed some money on my house, and the lumber company was crowding me for it, and they wanted me to go up there into the mountains, the Blue Mountains, and file on a homestead and stay there until I had lived there long enough to commute and then sell the land to the Blue Mountain Company, you see, and they had offered me work there in the mill, and I didn’t want to take my wife and children up there, and I thought possibly I could get the money from the east, and possibly hold this claim down for a while and sell it, and my brother was thinking of investing some money in the east, and I wrote to him and asked him if he could help me out, and I asked Jack, and I said, ‘Jack, now you told me I could get \$150.00 any time I wanted it, and I would like to get that much money, but I don’t want to sell it,’ and Jack says, ‘All right, I think we can fix it up,’ and he told me I could sign a bond for a deed, that is what I thought I did sign until Mr. O’Fallon and Mr. Goodwin convinced me I had signed a warranty deed.”

Apparently the witness did sign the instrument which is in evidence as a deed, under the impression that it was a bond for a deed, and apparently he had some words with O’Keefe about the matter later. Some light may be thrown upon this incident and misunderstanding, and also upon the fact that the deeds in this case, as in the Dammarell case, were not sooner placed on record, by reference to certain facts elicited by the cross-examination, his testimony being as follows:

“Q. Mr. Prentice, Mr. O’Keefe told you that you would have a year or until the maturity of that note to redeem that land and sell it to anyone else, didn’t he? A. Yes, he told me I would have until the note ran out.

“Q. And when the note ran out you found you didn’t want to redeem it, and let it go?

“A. I didn’t wait for the note to run out.

“Q. He told you he wouldn’t record the deed until after that time?

“A. Yes, sir, he told me that deed wouldn’t be recorded, or the bond for a deed.

“Q. He told you he wouldn’t record that until he found out whether or not you wanted to take up the claim? A. Yes, sir.” [308—65]

And thereupon the witness again stated that he never did decide to sell the land, that he thought he was only giving a bond for a deed. It is not apparent that the witness was unduly friendly to the defendants or desired to withhold the facts, and, taking his testimony to be true, the entry was free from legal objections.

#### ENTRY OF EDGAR J. TAYLOR.

In its material feature this entry is very similar to those of Dammarell and Prentice. It was made April 25, 1904, passed to final proof July 11, 1904, and was deeded directly to Kester and Kettenbach July 12, 1904. Like Dammarell, Taylor seems to have had the impression that the instrument which turned out to be a deed was only a contract or bond of a deed. This misunderstanding may have been



due to the fact that he was told that if he wanted the land back or could get any more for it prior to the maturity of his note, which ran for a year, that he could have the land back upon paying the amount due upon the note. Upon this point his testimony strongly corroborates that of Dammarell and Prentice. From his testimony, found at page 668, it appears that he always had the impression that notwithstanding the instrument which he executed on July 12th, he still had the right to take the land back or sell it to some other person, and in speaking of the transaction of closing up the loan and giving the note, which was signed by himself and brother, for \$1,100.00, after making final proof, he testified, in response to questions put to him by counsel for the Government: "He (referring to O'Keefe) wanted us to give a bond for a deed to secure the note, and we turned the receiver's receipts over to him and gave a bond for a deed at the time." And as to his understanding with O'Keefe prior to making the entry he testified, upon his direct examination, as follows: [309—66]

"Q. When you made your filing, to whom did you understand you were to convey this land?

"A. When I made the filing?

"Q. Yes.

"A. You mean who I understood I would sell the land to?

"Q. Yes.

"A. I didn't understand then that I would sell it to anybody; I understood I could sell it to Mr. O'Keefe for \$150.



“Q. Did you understand that Mr. O’Keefe had some connection with Mr. Kettenbach or Kester?”

“A. No, I did not.”

In other words, apparently the only assurance given to him, so far as he understood it, was that Mr. O’Keefe, his uncle would, if he desired to sell, give him at least \$150.00 for the land, and I am inclined to think that that was the real understanding and the real arrangement, and that after making final proof he and his brother executed a joint note for \$1,100.00, and he was given to understand that the instrument which he signed was given only for the purpose of securing payment of the note, and that if he had an opportunity to sell at any time before the maturity of the note he would have a right to do so, subject to the payment of the note. It appears to be true that the note was not returned to him upon execution of the deed, but was held by the bank or O’Keefe or Kester and Kettenbach. It is wholly improbable that if it was understood that the execution of the deed closed the transaction he would have permitted his note to go along and to be held together with the deed. It is not clear just what the motives of the other parties to the transaction were in putting the matter into that form. It is well known that the popular idea prevails in some quarters that the taking of a deed upon the conditions on which this deed was taken, according to the testimony of the entryman, instead of a mortgage, avoids the necessity of foreclosing in case the obligation of the debtor is not discharged, and it may be that the parties acted upon that theory. But

whatever may have been the motives of the other parties, the controlling question here is as to what was the understanding of the entryman, and his good faith in making the entry is not affected by the motives and purposes [310—67] of the other parties to the transaction. The entry is accordingly held to be valid.

#### ENTRY OF CHARLES W. TAYLOR.

This entry was made April 25, 1904, passed to final proof July 11, 1904, and conveyance by deed to Kester and Kettenbach was made July 12, 1904. I am inclined to the view that in all material respects the entry was made and the land was conveyed upon the same conditions and under the same circumstances as have been described in the case of the Edgar J. Taylor entry. The testimony of this entryman, however, is very unsatisfactory from any standpoint. Inconsistent statements are made in rapid succession, without any apparent appreciation upon the part of the witness of their inconsistency. It is not thought that he was trying to withhold or color the facts, or that he was hostile either to the Government or the defendants. The witness is apparently not a man of strong mentality, and lacks the capacity to see a transaction as a whole, as a consequence of which in testifying he states a fact without regard to its relation to other facts, and without any limitation by reason of such relation. A witness with such a mental attitude is easily led into making fragmentary statements, which, being unqualified and taken literally, leave an erroneous impression of the transaction as a



whole, and in the examination of the witness counsel for both sides indulged in questions which were highly leading. He testifies that when his uncle (O'Keefe) first spoke to him about taking up a claim, which was several months before the entry was made, the proposition was that he (O'Keefe) was to purchase the claim and pay therefor the specified sum of \$150.00 and furnish all the funds necessary to secure title. Later, and some time before the entry was made, O'Keefe told him that he had learned that such an agreement could not lawfully be made. And then [311—68] from time to time upon the several direct examinations and the several cross-examinations of the witness, in response to leading questions he seems to say at one time that he proceeded and made the entry and procured title under this original understanding, by which he was to sell the claim for \$150.00, and at another time he states that he did not proceed under the original understanding. But his final word, while upon the witness-stand, was to the effect that he had no understanding or agreement by which he was to sell to O'Keefe or to any other person. Near the close of his last "recross"-examination, he testified:

"Q. But you just testify that afterwards Mr. O'Keefe called that deal off, that he couldn't carry out that agreement, and that you had no other contract or agreement regarding it?

"A. There was nothing more ever said about it.

"Q. That was long before you filed on your claim, wasn't it?

"A. It was the time we were going into the tim-



ber or coming out of the timber.

“Q. Well, you went to the timber and came out before you filed?      A. Yes, sir.

“Q. Well, then, at the time you filed on it, it wasn't your understanding that it was to go to Kester or anyone else?

“A. Well, there was nothing more said about it. I looked at it then just the same as I do now, that if I had the claim now and had a deed to it, and if anybody offered me \$1,000.00 or anything more then I would sell it and pay them the money I borrowed from them.

\*            \*            \*            \*            \*            \*

“Q. Regardless of this affidavit—I don't care whether this affidavit is true or false—but regardless of this affidavit, when you filed on the claim you didn't understand that it was to go to Kester, did you?

“A. After he told us that we never give it another thought. We considered that we wasn't under no obligations.”

And upon the last “redirect” examination, by which his testimony is closed, he said:

“Q. When you went to the land office and filed what did you really understand was going to be done with your claim? What did you intend to do with it after you made proof?

“A. I aimed to sell it, of course.

“Q. Whom did you think you were going to sell it to?

“A. I knowed I could sell it to O'Keefe if I didn't sell it to nobody else, but I never give it any more

thought. As I already told you, after he told us that, I never talked to him any more about it.

“Q. But even when you filed you knew he wanted it and would take it, didn’t you?

“A. I knew I could get rid of it to him, that was all there was to it.” [312—69]

As to the circumstances of making the deed soon after making final proof, the witness testified as follows, upon cross-examination:

“Q. Then after you got your receiver’s receipt don’t you remember, after reading this affidavit, that you and your brother talked about selling your claims then? A. Yes, we spoke about it.

“Q. After you made your proof? A. Yes, sir.

“Q. And you and your brother borrowed \$1,100.00, did you not, and gave your note for it?

“A. Yes, sir, gave our note for \$1,100.00.

“Q. That was in payment for the money you had from Mr. O’Keefe for expenses and location fee and the purchase price of the land? A. Yes, sir.

“Q. How long was that note to run?

“A. A year, I think; I am not positive.

“Q. And you and your brother talked over the advisability of selling your claim, going home after you made your final proof you talked it over, didn’t you? A. Yes, sir.

“Q. And you went and talked to Mr. O’Keefe about it after you got home, the next day some time, didn’t you?

“A. Either the next day or the day after; it was within a day or two though.

“Q. And you told him if you could get \$150.00 for

the claim, over and above the note, and get your note back, you would be willing to sell, or words to that effect? A. Yes, something like that.

“Q. Didn’t he tell you he would give you the \$150.00, but if you had an opportunity to sell it within a year for more money you could do so, you could redeem it within a year, or something to that effect? A. I don’t remember just what he did say.

“Q. Don’t you remember something of that kind occurring?

“A. Something was said. He didn’t say much to me about that; he was talking to my brother about it.”

On the whole, while, for the reasons stated, the evidence is unsatisfactory, it is thought that it is insufficient to justify cancellation of the entry.

#### ENTRY OF DAVID S. BINGHAM.

This entry was made April 25, 1904, passed to final proof July 15, 1904, was transferred to O’Keefe July 26, 1904, and O’Keefe, by quitclaim deed transferred to Kester and Kettenbach July 30, 1904, and by Kester and Kettenbach the land, together with other timber tracts, was deeded to the Idaho Trust Company July 6, 1907. In some of its features this entry is different from the other so-called O’Keefe entries. [313—70] For practically the same reasons and in the same respects the testimony given by the entryman, who was called as a witness for the Government, is quite as unsatisfactory as that of C. W. Taylor. It is not apparent that the witness was biased in favor of, or prejudiced against, any of the parties to the suit, and I have no doubt that he in-



tended to disclose the facts as he remembered them and understood them to be; but it remains true that different portions of his testimony, elicited by leading questions, and especially questions calling for conclusions, are inconsistent one with the other. It seems that Bingham was acting as foreman for Kester and O'Keefe in their irrigation project, but no suggestion was made to him, as it was to the Taylors, that he take up a timber claim. Apparently he first learned that the Taylor brothers and Dammarell and Prentice were going to take up claims after they had made their visit to the timber, in company with O'Keefe. Feeling somewhat aggrieved, he made inquiry as to why he had not been given the opportunity, as well as the others, and he was thereupon informed that probably Dwyer would still be able to find a claim for him. Bingham was already familiar with the country in which the timber claims were being taken, and it was concluded that it was not necessary for him to make a special trip for the purpose of viewing the land, and Dwyer simply gave him the description of the claim which he had picked out. The money was furnished to him practically in the same way as to the other entrymen, and he made his entry at the same time, and Dwyer exacted the customary location fee. Somebody, probably O'Keefe, also arranged to hold a place for him in the line which was formed at the land office immediately before the lands became subject to entry. From his original testimony given upon direct examination it would appear pretty clearly that he had an unlawful agreement with O'Keefe to sell the

claim as soon as he acquired title. But later, in [314—71] describing the circumstances connected with the sale and transfer to O'Keefe on July 26th, a couple of weeks after he made final proof, the witness states that prior to the day of making the deed he had a talk with O'Keefe, who wanted to know if he, the entryman, desired to sell. The witness goes on to state that there was ten acres of orchard land that he wanted to buy, and there was some money coming to him, and he thought if he could get the money out of the timber claim he would buy this ten acre tract, and after talking with his wife they concluded that they would better sell the timber land and buy the ten acres. Accordingly, when O'Keefe came to him at his home the day the deed was executed he testifies that O'Keefe said: " 'Well, now,' he says, 'the arrangements is,' he says, 'to let you have over and above all expenses,' he says, 'that you was to down there, why,' he says, '\$150.00.' 'Well,' I says, 'I might as well take it, Jack, along with the balance of them.' He told me he had made similar arrangements as far as the Taylor boys, I guess." Prior to that he had testified that O'Keefe had told him before he perfected his entry, that he (O'Keefe) was connected with Kester and Kettenbach, and "would like to have a prior right to buy my claim if I felt disposed to dispose of it, and that he had others, and mentioned others that he had bargained for." Out of his own money he paid his personal expenses and the filing fees, but expected to be reimbursed when he sold the land. Upon cross-examination he testified as follows:



“Q. Now, you had no talk with Mr. O’Keefe, then, in regard to selling him the land until after you proved up?

“A. He asked me if he could have the prior right of buying this land.

“Q. Did he say the prior right or the preference right?

“A. The preference right or the prior right. I understood if I wanted to sell that he wanted the first chance.

“Q. And that was the talk you had with him?

“A. Yes, sir.

“Q. And that is all the talk you had with him in regard to buying?      A. Yes, sir.

“Q. And then after you proved up some little time he came to Cloverland and asked you if you wanted to sell?      A. Yes, sir.

“Q. And you told him that you would have to see your wife?      A. Yes, sir.

“Q. And you did go to see your wife?

“A. Yes, sir. [315—72]

“Q. And you asked him how much he would give you, or something to that effect, didn’t you?

“A. Yes, sir.

“Q. And he told you that he had given Dammarell and Prentice—that he had bought their claims, and he had?      A. And the Taylor boys.

“Q. Yes, and the Taylor boys, he had bought their claims and had given them \$150.00 over and above expenses?      A. Yes, sir.

“Q. And that he would give you the same?

“A. Yes, sir.



“Q. Then did you talk with your wife again after you had talked with him about the price?

“A. Yes, sir.

“Q. And she told you that she thought you had better sell?      A. Yes, sir.

“Q. If you could buy the other piece of land up there?      A. Yes, sir.

“Q. And you went back and told O’Keefe that you would take it?      A. Yes, sir.

“Q. And the bargain was all made in regard to the sale of your land there that day, the day that you sold it?

“A. The day that I sold it, yes, we closed the bargain that day.

“Q. Mr. Bailey was with him?      A. Yes, sir.

“Q. And he sat down at the table and did some writing, and either drew up this deed, as you testified on your direct examination, or was doing some writing?      A. Yes, sir.”

Thereupon the witness was shown the deed, and his attention called to the fact that it was apparently written and signed with the same ink, and after looking at the instrument the witness expressed the opinion that the deed was drawn up while Mr. Bailey was at the witness’ house. The witness further testified that he understood from O’Keefe that he was acting as a middle man for Kettenbach and Kester. And again reverting to the relations between himself and O’Keefe prior to final proof he testified as follows:

“Q. Well, he wasn’t talking about buying your claim before you made final proof, was he?

“A. Why, as I stated before, after I put up my money and took a claim, why, he wanted the prior right providing I wanted to sell.

“Q. He wanted the preference right?

“A. He wanted the preference.

“Q. That was all he said?

“A. That was all he said until after I proved up, and then he was dead anxious to get the claim.”

And upon redirect examination the witness testified as follows:

“Q. As a matter of fact, Mr. Bingham—I am not asking you now whether you had an absolute contract or agreement with Mr. O’Keefe at that time—but as a matter of fact wasn’t it your understanding that you were going to convey that to O’Keefe after you got it?     A. That is my recollection. [316—73]

“Q. You would not have taken it up if you hadn’t had that understanding, would you, at that time?

“A. No, I don’t believe I would at that time.

“Q. And the matter turned out just exactly as you understood it would when you first talked to Mr. O’Keefe about it?     A. Yes, sir.

“Q. And you did just what he told you in the whole transaction?     A. Yes, sir.”

Immediately, upon recross-examination, the witness testified:

“Q. Now, Mr. Bingham, you had no talk with Mr. O’Keefe about selling to him, further than he wanted the preference right to buy it?

“A. Yes, sir, that was all, that was what I stated.

“Q. And you had no talk about the price?

“A. No, sir.

“Q. And you could have sold it to anyone else you wanted to if he would have given you more than Mr. O’Keefe?     A. Yes, sir.

“Q. Then you had no understanding with him that you would deed the land to him?

“A. Not only me being working for him, and the like of that, why, he wanted the right for it, that is, the first right, and I told him I would give it to him. I could have sold it to anybody though, as far as that is concerned.

“Q. Now, you just told Mr. Gordon that you understood that you was to deed it over to O’Keefe?

“A. I didn’t tell him anything of the kind, that I was to deed it over to him, or anything of the kind. I told you he had the prior right to it, or the preference.

“Q. Well, you just said, in reply to Mr. Gordon’s question, you told him—

“A. Yes, that was the understanding, that if I sold to him I was to deed it over to him, of course.

“Q. How is that?

“A. If I sold it to him I was to deed it over to him.

“Q. Then there was no understanding?

“A. No understanding whatever, no.

“Q. What do you mean to be understood as saying is that if you wanted to sell it—

“A. I wasn’t tied up with him so that I couldn’t sell it to anybody else. I could have sold it to other parties if I had wanted to.

“Q. And the only obligations you felt under to Mr. O’Keefe was to give him the preference right?



“A. A preference right to buy, yes, sir.

“Q. If he would have given you as much as anybody else you would have sold to him?

“A. Yes, sir.

“Q. And if he would not have given you as much as anybody else you would have sold to anybody else?

“A. Whoever would have given the most for it.”

Clearly such testimony, with its apparent inconsistencies and contradictions, cannot be taken as satisfactorily establishing the affirmative proposition that there existed between the entryman and O’Keefe at the time the entry was initiated any understanding or agreement upon the part of the entryman that he was to sell to O’Keefe or to sell to any person for any fixed price. An understanding by an entryman that if he sold he would give the first [317—74] opportunity to a designated person to purchase, provided such person would give as much as anybody else, does not constitute an agreement obnoxious to the statutes pertaining to the entry of timber lands.

#### ENTRY OF JACKSON O’KEEFE.

The remaining entry embraced in the “O’Keefe group” is that of Jackson O’Keefe himself. The entry was initiated at the same time that the other entries were made, and likewise the final proof. Upon August 27, 1904, about six weeks after final proof, O’Keefe executed a mortgage to the Lewiston National Bank to secure the payment of \$2180.00, and the same was promptly recorded, and on June 16, 1906, he transferred the land to Kester and Kettenbach by deed, reciting a consideration of \$1500.00.

There is no evidence at all bearing directly upon the circumstances surrounding the entry or touching its validity. It must be held that the evidence is insufficient to sustain the charge that title from the Government was procured by fraud. [318—75]

### THE STEFFEY GROUP OF ENTRIES.

The entries involved in case No. 407 are frequently referred to as the Steffey entries, by reason of the fact that one Harvey J. Steffey, a timber cruiser and locator, located the eight different claims, and was instrumental in procuring the money to defray the expenses incident to securing title, and also in making a sale of the lands to the defendants Kettenbach and Kester. The entries were made by CHARLES S. MYERS and JANNIE MYERS, his wife, CHARLES A. LONEY and MARY A. LONEY, his wife, JAMES T. JOLLEY and EFFIE JOLLEY, his wife, CLINTON E. PERKINS, and FRANK J. BONNEY. The four men first named are brothers-in-law, and Mrs. Myers, Mrs. Loney, and Mrs. Jolley are sisters. Each of the claims embraced 160 acres except that of Jannie Myers which covered only 80 acres. The entry of Charles S. Myers was made in the latter part of 1905, and the other seven entries were made upon various dates during the year 1906. While the testimony pertaining to the several claims differs in minor particulars, the arrangement under which they were entered and the circumstances surrounding the entry, the final proof, and the conveyance to Kester and Kettenbach are, in substance and effect, substantially



the same. So far as the regularity or irregularity of the entries is concerned, the evidence consists almost exclusively of the testimony of Steffey and of the several entrymen. If Steffey's version of his arrangement with the several entrymen be accepted as true, the entries were undoubtedly invalid, for in every case an understanding was had between him and the entryman prior to entry, giving him, for a fixed and definite consideration, control of the title after it should be procured from the United States. For reasons to be stated, however, the testimony of this witness is to be scrutinized closely and received with caution, and it is doubted whether, under the circumstances, upon his [319—76] evidence alone, a court could properly cancel the patents. In the main the testimony of the several entrymen is the same, and, though each one of them at one time or another while on the witness-stand, categorically denied the existence of any agreement or understanding with Steffey prior to the initiation of the entry as to the disposition of the title, I am convinced by the circumstances of the case and the admitted conduct of the parties that they all made the entries with the understanding both upon their part and upon the part of Steffey that, upon the issuance of final certificate, for a definite consideration, they should convey the land to anyone whom Steffey might designate. My impression is that the entrymen were reluctant to appear as witnesses for the Government, and were disposed to place what they did in as favorable a light as possible. It is not improbable that some of them at least, by reason of the



fact that the actual understanding with Steffey was not fully expressed, but was in a large measure left to inference, were led into evading, without fully appreciating that they were violating, the law. Each one from time to time in the course of the proceedings procured the necessary funds from Steffey to pay expenses and to pay the Government price for the land. No note was given and no interest agreed upon. Within a short time after final certificate was issued each executed a deed at Steffey's request in favor of Kester and Kettenbach. The circumstances surrounding the execution of the deeds, in most cases at least, are significant. Apparently at no time between the filing of the original application and the execution of the deed was there any discussion between the entryman and Steffey as to what disposition should be made of the land or what the entryman should realize out of it, or what price it should sell for; yet when the deeds, prepared under Steffey's direction, were presented, each signed as a matter of course and without question as to the [320—77] consideration to be paid, as if the whole matter was being done pursuant to some preconcerted arrangement.

There remains for consideration the question whether or not Kester and Kettenbach are purchasers in good faith, without knowledge of the facts rendering the entries invalid. The contention put forth upon behalf of the Government is that Steffey was acting in the interest of Kester and Kettenbach, and pursuant to an understanding had with Dwyer, who was either associated with Kester and Ketten-

bach or represented them as agent. Primarily, this contention rests upon the testimony of Steffey alone. In a slight degree it is corroborated by the testimony of Robnett, and possibly by that of Chapman, the former being at the time bookkeeper and the latter teller in the Lewiston National Bank, of which Kettenbach was president and Kester the cashier. In substance, Steffey testifies that he had worked for Dwyer in the timber, and was himself locating people upon timber lands, and that at some time, he doesn't remember when, but after he had cruised the lands embraced in this group of entries, he called Dwyer's attention to them, and Dwyer suggested that he go ahead and locate people upon them, and they (referring to himself, Kettenbach and Kester) would pay \$200.00 a claim, and furnish Steffey with the necessary funds to enable the entrymen to pay the expenses and procure the title. There is no pretension that he was employed upon a salary or commission basis, nor, according to his testimony, was there any understanding as to what he should get out of the project. He was scarcely acquainted with Kester or Kettenbach, and directly had little, if anything, to do with either one of them relative to any of these claims. He testifies that at one time he discussed the matter of one of the claims with Dwyer and Kester, or in Kester's presence, and at another time he appealed personally to Kettenbach to arrange for the necessary funds to [321—78] make some final proofs. These incidents and conversations are either denied or explained by the defendants. Undoubtedly Steffey did from time to time



procure funds from the bank by drawing his personal checks, either in his own favor or in favor of the entryman, and most of the requisite funds were thus secured to perfect the entries. The fact that the funds were thus obtained through the bank with the knowledge of Kester and Kettenbach is regarded by the Government as a circumstance strongly tending to corroborate Steffey's version of the transaction, and, as will be seen, the issue in a measure depends upon the probative significance to be attached thereto. Plainly, the testimony of Steffey must be treated as that of an accomplice, for we have already concluded that the entries were made pursuant to a conspiracy, entered into by Steffey and the several entrymen, he being the leader, to defraud the Government out of its timber lands. Not only was he an accomplice in the conspiracy, but in effecting the object thereof he suborned perjury, for he knowingly induced the several entrymen to commit perjury in their preliminary applications; and it is further to be noted that while acting as a witness at the final proof in several cases he made answers under oath which he knew to be untrue, and which, while possibly not constituting technical perjury, involved the moral obliquity of perjury. At subsequent dates, as shown by the record, he persuaded some of these entrymen to make affidavits giving versions of the transaction not in harmony with what he knew to be the facts. Just what induced him voluntarily to become a witness upon behalf of the Government and to make known the facts disclosing criminal conduct upon his part is not entirely clear. He seems



to disclaim any feeling of ill-will toward the defendants Kester and Kettenbach, and yet, with some apparent reluctance, admits that he does not think they treated him right. He very evidently bears considerable ill-will [322—79] toward Dwyer. There is some testimony in the record that he had stated upon different occasions that he was going to get even with the defendants. At page 1315, upon cross-examination, he himself testifies:

“Q. Did you tell him (a certain individual) they (Kester and Kettenbach) hadn’t done right by you and you was going to cinch them?

“A. Very likely I did. I never told him I would cinch them, but I very often told him they didn’t do right by me.”

And at page 1318 he testifies:

“Q. Now, when did you first wake up to the realization of the fact that there was something wrong about this transaction?

“A. Before I entered into it.

“Q. When did you make up your mind to tell the Government officials about it?

“A. Well, some time after Dwyer had tried to sell my barn and did other things in connection with it.

“Q. As a matter of fact, you did it more to even up with Dwyer than anything else, didn’t you?

“A. No, I was perfectly even with him before.

“Q. You was even with him before? Then did you do it to even up with Kester and Kettenbach?

“A. I had nothing to even up with them.

“Q. But if you hadn’t been mad at Dwyer you wouldn’t have done it, would you?

“A. Possibly I might.

“Q. It wasn’t for the purpose of vindicating the laws of the great commonwealth that you did it then, was it?     A. Not exactly, no, sir.

“Q. It wasn’t because you had repented of anything wrong that you had done, or a kind of remorse, or anything of that kind?

“A. Oh, no, not in particular, no, sir.”

Obviously testimony so tainted cannot properly be accorded the weight and force of evidence from an undefiled source. It is further to be remarked that notwithstanding repeated and extended interrogation Steffey’s account of the alleged arrangement between him and Dwyer, upon which the plaintiff necessarily relies, is almost wholly wanting in detail. He remembers neither the time nor the place nor the circumstances of the conversation, and while it would not be strange if the exact time were forgotten, it is quite remarkable that as to a matter of so much importance he could not recall where the conversation took place or any of the attending circumstances. The contention of the Government is that the arrangement with Dwyer to take over these claims was made before any of the [323—80] entries were initiated, and upon direct examination Steffey so testifies, but upon cross-examination, at page 1295, he testifies as follows:

“Q. Now, what was the conversation you had with Dwyer regarding these Myers and Bonney and Jolley claims you speak of, the first conversation you had regarding it?

“A. I told him about these lands that I had

cruised out, and he told me to get somebody and locate on them and tell them we would give them \$200.00 after they had proved up on them.

“Q. And that is all that was said?

“A. Well, yes, in particular about that.

“Q. Now, when was that?

“A. I couldn't say when it was, the exact date.

“Q. Then what did you do?

“A. I went up and located them.

“Q. Dwyer told you that he would give them \$200.00 over and above expenses?     A. Yes, sir.

“Q. Had Dwyer gone and looked at the claims?

“A. Some of them he did.

“Q. What claims did he go to look at?

“A. He went to look at Mrs. Loney's and Mrs. Jolley's claims.

“Q. Did he know that Mrs. Loney and Mrs. Jolley were going to take those claims?

“A. I think they had already taken them when he looked at them.

“Q. Hadn't they already filed on them?

“A. Yes, sir.

“Q. Hadn't they made their final proof too?

“A. I don't think they had.

“Q. To refresh your recollection, wasn't it after they made final proof and just before they made the deeds that Dwyer went up and looked at them?

“A. Possibly, but I don't recollect it.”

It would seem to be clear from this testimony, if taken as true, that the conversation relied upon as constituting the agreement between Dwyer and Steffey did not take place until after he had looked at



Mrs. Loney's and Mrs. Jolley's claims, and that he did not look at these claims until after they had filed on them. But only one of the eight claims was filed upon at a later date than the filings of Mrs. Jolley and Mrs. Loney. In this respect Steffey's testimony would tend to corroborate the claim of Dwyer that his offer to purchase the claims was made after they had been entered and proved up on.

Turning, now, to the corroborative evidence, we find that at page 1739 Robnett testified as follows:

"Q. Do you know Harvey J. Steffey?

"A. I do.

"Q. Did you ever have any direction from any of the officers of the Lewiston National Bank relative to honoring his checks? A. Yes, sir. [324—81]

"Q. Well, state what it was.

"A. Why, Mr. Kester came to me and told me that all of the checks of Mr. Steffey could be honored, as he was up in the timber doing some cruising, and also doing some locating for them, and at different times he was doing some buying, and his checks would be allowed, and whenever they came in they would be taken care of, and if there was an overdraft it was all right."

This conversation is denied by Kester, and under all the circumstances of the case probably little weight should be accorded to it. It will be noted that the witness does not give the time when this conversation occurred, or, in any other way than as indicated in the general language itself, connect it with the claims under consideration. Just before so testifying the witness had stated that he was in

the confidence of Kettenbach and Kester, and discussed with them all of his timber transactions and a great many of theirs, but he does not testify that any of these entries were ever discussed with him by either Kester or Kettenbach.

The other witness called by the Government to testify upon the subject is John E. Chapman, teller of the Lewiston National Bank during the period under consideration. Apparently, he had no interest in the result of the suit, and, to say the least, it is not claimed that he was biased in favor of the defendants. Upon being interrogated by counsel for the Government, he stated that the defendant Kester, as cashier of the bank, authorized him to allow an overdraft in favor of Steffey. It was a general authorization for a small overdraft, but, as the witness put it, "for any large amounts coming in it was always put up to the cashier for his O. K." The witness remembers two or three occasions when Steffey's overdrafts were so submitted to Mr. Kester for his approval. He thinks the overdraft at one time ran up to between \$2,000.00 and \$3,000.00, and the witness then asked Kester whether he should honor the checks any longer. Upon cross-examination the witness testified that from time to time Steffey gave notes to cover [325—82] his overdrafts, but he is not sure that the notes covered the entire overdraft. The witness further stated that while he had no definite knowledge he was of the impression that Steffey had some property, consisting of timber lands, and that at different times Steffey "had a number of good deposits" in the bank. He testified:



“Q. Mr. Steffey was considered a good customer of the bank, was he?     A. Yes.

“Q. And the bank never lost any money on him that you know of?     A. Not that I know of.

“Q. And those overdrafts of Mr. Steffey’s were handled the same as overdrafts of anyone else, any other customer of the bank, were they not?

“A. So far as I know.

“Q. You consulted Mr. Kester about the large overdrafts just the same as you would consult him about—     A. —about anyone else’s.”

The witness doesn’t remember the date of the overdrafts.

The testimony of Chapman relative to the giving of notes is in harmony with statements made by Steffey himself upon cross-examination. The details of his account with the bank are not disclosed by the record, and it is to be assumed from that fact that neither side introduced such account that it was not regarded as in itself tending to support either the view of the Government or the position of the defendants. It is apparent from what has been said that, aside from the testimony of Robnett and Steffey, the facts and circumstances surrounding the drawing of money from the bank to enable these several entrymen to procure title are quite as easily harmonized with the theory of the defendants’ ignorance of the relation existing between Steffey and the entrymen as with the theory that they knew of such relation. It appears from both the testimony of Steffey and Chapman that Steffey carried a current checking account with the bank, and that he



made considerable deposits from time to time, and that he was regarded as a man of some responsibility, and that his overdrafts were apparently authorized in the ordinary course of business and in accordance with the custom of the bank. The checks drawn by [326—83] Steffey for the purposes of these entries were indistinguishable in form from the checks which he drew for other purposes; they were not distinctively marked, nor were they put aside or segregated by the bank officials from the other checks drawn by Steffey. And in this connection it is to be borne in mind that all of the eight entries were not made upon the same date, and the money was not all required at the same time. The final proof in one case was made as early as January 22, 1906, and in one case as late as October 11, 1906. Another final proof was on June 6, 1906, two on June 19, 1906, and three on July 12, 1906. It will be observed that at no one time, therefore, was more than \$1500.00 required. No explanation is furnished as to why the bank required, and Steffey gave, notes from time to time to cover his overdrafts. Without such explanation it is not apparent why, if Steffey was practically doing business for and as the agent of the president and cashier of the bank, he should give his personal note to the bank for moneys expended upon their behalf. When called upon to give a note it would have been a very simple and a very natural thing for him to have said, "This overdraft represents expenditures upon your account, and therefore it is for you and not for me to take care of it."

There is another circumstance which is not entirely

clear. Steffey testifies that while there was no definite agreement as to what gain he should realize out of the scheme, it was understood that he was to share in the profits and was to be taken care of. He further testifies, however, that he got nothing out of it. Some of the entrymen testify that he was to be paid a location fee. As I read the testimony, he denies having charged or received any location fee, and also denies having gotten anything out of any of the transactions for himself. He further testifies that with possibly one or two exceptions the entrymen were to receive \$200.00 for their service in [327—84] entering and transferring title to the claims. Yet in the face of these facts it appears that the lands were sold to Kester and Kettenbach for various prices, and that the prices paid were as recited in the deeds themselves. The amount actually paid to the entrymen was in no case greatly in excess of \$200.00, yet, according to the recitals in the deeds, Kester and Kettenbach paid for one claim \$1,250.00, for two claims each \$1,000.00, for two claims each \$950.00, for one claim, \$900, for one claim \$850.00, and for one claim, consisting of only 80 acres, \$450.00. The record does not satisfactorily disclose what became of the difference between the purchase price and the expense of procuring title, together with the compensation paid to the entrymen.

Enough has been said to indicate that Steffey's version finds little corroboration in the attending circumstances. In such a condition of the record what are the probabilities, basing our estimate upon the uncontroverted circumstances of the case and the



motives which ordinarily control human conduct? Upon the one hand, it is undoubtedly true that the defendants were acquiring timber lands, and were lending encouragement and assistance to qualified entrymen, with the hope at least that they would be able to purchase the title after it passed from the Government into private ownership. At least in some quarters in the community the belief prevailed that so long as there was no contract in writing, a verbal agreement or a tacit understanding was not in violation of the law, and we are not without evidence of the fact that the idea was more or less generally entertained that so long as the entryman was qualified and the Government was being paid the price which it asked for the lands, no wrong would be done by an evasion of the technical requirements of the law. To what extent, if at all, the defendants themselves may have shared in or been influenced by such view, [328—85] which was more or less common, is not clear. Its prevalence may at least have made them less careful and vigilant than they otherwise would have been in furnishing money to entrymen before final proof and in purchasing lands after they passed to final proof. On the other hand, the record shows that in July, 1905, a considerable time before any one of these entries was initiated, and again in November, 1905, about the time the first entry was made, the defendants were indicted on charges of conspiring to defraud the United States out of its timber lands and of subornation of perjury in relation to the acquisition of title to certain timber lands. If not otherwise, the technical requirements of the



statute must have thus been forcibly brought to their attention, and they must have become conscious of the peril of participating in the fraudulent acquisition of timber lands and of the risk of purchasing titles so acquired. In the absence of some powerful motive or some strong incentive it would seem to be almost incredible that men of business and social standing in the community would, after indictment charging certain conduct to be criminal, and after being advised that the Government was engaged in an investigation of their transactions relating to the acquisition of timber lands, lend themselves to, or continue to participate in, a scheme violative of the very laws on which the pending indictments were based. No motive is suggested by the record other than that of financial gain, and it appears not only that at the time of these entries the price of timber lands was generally depressed, but that these particular lands were not highly valuable. The defendants were so much in doubt as to the value of at least two of the tracts that they hesitated to purchase at all, and took them at the small price named with considerable reluctance. Incentives to crime, therefore, seem to have been almost wholly wanting, and upon a painstaking consideration of the entire record, I am unable to find that the defendants had any knowledge or [329—86] reason to believe that Steffey had any unlawful arrangement or understanding with the entrymen. As to these entries, therefore, the complainant's prayer must be denied.

#### GENERAL CONCLUSION.

Summing up the conclusions hereinbefore stated, it is held that the bills in No. 388 and 407 should be

dismissed, and that the bill in No. 406 should be dismissed as to all of the claims and entries therein specified excepting those of Guy L. Wilson, Frances A. Justice, and Robert O. Waldman, and as to these three claims a decree will be entered cancelling the patents thereto. [330—87]

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[**Testimony.**]

*In the Circuit Court of the United States for the District of Idaho, Northern Division.*

IN EQUITY —Nos. 388-406-407.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH and Others,

Defendants.

Appearances:

PEYTON GORDON, Esq., Special Assistant to the Attorney General, for Complainant.

JAMES E. BABB, Esq., for Lewiston National Bank, Idaho Trust Company, Potlatch Lumber Company, Clearwater Timber Company and Frank W. Kettenbach.

GEO. W. TANNAHILL, Esq., for William F. Kettenbach, George H. Kester, William Dwyer, Elizabeth White, Edna P. Kester, Martha E. Hallett, and Kittie E. Dwyer.

Messrs. MORGAN & MORGAN, for Western Land Company.

EUGENE A. COX, Esq., for Elizabeth Kettenbach, Curtis Thatcher, Elizabeth W. Thatcher, and Elizabeth White.



These causes came regularly on for hearing this the 22d day of August, A. D. 1910, at Lewiston, Nez Perce County, Idaho, in the courtroom of the District Court of said Nez Perce County, Idaho, before Honorable Warren Truitt, Special Examiner, heretofore duly appointed, the solicitors for the respective parties being present, the hearing commencing at ten o'clock A. M. of said day. [331\*—1†]

Whereupon the parties stipulated and agreed in open court as follows:

**[Stipulation Concerning Objections and Exceptions to Testimony and Evidence, etc.]**

The parties agree that upon the taking by complainant, before the Special Examiner heretofore appointed, or before any examiners who may be hereafter appointed, or before any person or persons who may be agreed upon by the parties to act in such capacity, of any evidence to be offered or used in the cause entitled, *The United States of America, Complainant, vs. William F. Kettenbach, and Others, Defendants, in Equity, No. 406*, all objections, exceptions and other proceedings had or taken upon behalf of any of the defendants in the causes above mentioned shall be held and deemed to have been taken severally also on behalf of each of the following named defendants, to wit, Elizabeth W. Thatcher, Curtis Thatcher, Elizabeth Kettenbach, Elizabeth White, and The Western Land Company, a corporation, and the Clearwater Timber Company,

\*Page-number of Original Certified Transcript of Record.

†Original page-number of Testimony as same appears in Original Certified Transcript of Record.



Potlatch Lumber Company, Idaho Trust Company, and Lewiston National Bank, and the said defendants last named shall have the benefit of all such objections, exceptions and proceedings so taken on behalf of such other defendants with the same force and effect as if the same had been taken severally for said last-named defendants by their respective solicitors of record herein. And the parties further agree that if, during the taking of any such evidence, the solicitors of the said last-named defendants, or the solicitor of any of said last-named defendants shall at any time be absent from the place where such evidence is being taken, then the solicitor or solicitors of any of the other defendants present may take any proceedings on behalf of the defendant or defendants represented by such absent solicitor or solicitors with the same force and effect as if such proceedings had been taken by such absent solicitor or solicitors.

It is further stipulated in open court by and between all the parties hereto that the portions of the transcript of the evidence heretofore taken at the trials of William Dwyer, William F. Kettenbach, George H. Kester, and Clarence W. Robnett, and which made up the records in said cases on appeal to the United States Circuit Court of Appeals for the Ninth Judicial Circuit in said cases, entitled in said appellate court, William F. Kettenbach, George H. Kester and William Dwyer vs. [332—2] The United States, and numbered 1605; William Dwyer vs. The United States, numbered 1606; and Clarence W. Robnett vs. The United States, numbered 1607,

to which any witness' attention may be called and with reference to which any such witness may be interrogated at the hearing now being had, shall be deemed in evidence with the same force and effect as though the stenographer taking such evidence and transcribing the same had testified in open court at the present hearing that such transcript was a true and correct statement of the evidence given by any such witness at the trials aforesaid.

It is further stipulated in open court by and between all the parties hereto that the portions of the transcript of the evidence heretofore taken at the trial of William F. Kettenbach, George H. Kester and William Dwyer, in the District Court of the United States for the District of Idaho, Northern Division, commencing on Tuesday, February 15th, 1910, at Boise City, Idaho, before Honorable Frank S. Dietrich, Judge of said Court, and a jury, in cases No. 605, 607, 615, 635, and 637, entitled *The United States of America vs. William F. Kettenbach, George H. Kester and William Dwyer*, to which any witness' attention may be called and with reference to which any such witness may be interrogated at the hearing now being had, shall be deemed in evidence with the same force and effect as though the stenographer taking such evidence and transcribing the same had testified in open court at the present hearing that such transcript was a true and correct statement of the evidence given by any such witness at the trials aforesaid.

The purpose of the last aforesaid stipulations is to obviate the necessity of calling the several stenog-



raphers who took the evidence in open court in said cases in shorthand to prove the said records are accurate and correct reports of the evidence aforesaid, and shall in no way be deemed a waiver by any of the parties hereto of any objection to any part of the evidence herein referred to, as to its competency, relevancy or materiality, made at the time the witnesses are being interrogated in regard thereto, at the present hearing.

And it is further agreed that said stipulation shall in no way be deemed a waiver of the objection of either of the parties to these actions to the evidence of any witness given at the former trials herein referred to, made at the time such evidence is offered, on the ground that it is incompetent, irrelevant or immaterial.

An adjournment was thereupon taken until tomorrow morning at ten o'clock. [333—3]

**[Proceedings Had August 23, 1910, Before Special Examiner.]**

On Tuesday, the 23d day of August, 1910, at ten o'clock A. M., the hearing was resumed.

The SPECIAL EXAMINER.—Mr. Gordon, in regard to these exhibits, what is your practice? Do you just file them with the Stenographer and have them marked?

Mr. GORDON.—Why, it has been the practice that when you take depositions away from the court, the counsel often retain them and file them with the court when they return them there themselves; but it would be agreeable to me if they could be left with



the Examiner, and the Examiner forward them with the record.

The SPECIAL EXAMINER.—The usual practice where I have been acting in this capacity, in any matter like a stipulation or anything of that kind, I have marked it filed as an Examiner and put it right with the original files or papers; but all exhibits have been identified by the Stenographer and retained with the testimony and reported right up. Now, I don't know whether that suits your practice.

Mr. GORDON.—Why any way suits me.

The SPECIAL EXAMINER.—That is the way we have done in some cases. I don't know whether you have been before me in these kind of cases or not, Mr. Tannahill; but the Stenographer then has the entire record.

Mr. TANNAHILL.—I think that would be more convenient and more satisfactory.

The SPECIAL EXAMINER.—Of course, as Mr. Gordon suggests, where they are taken away perhaps the attorneys might retain them and file them later on. But if the Stenographer has the entire record he takes charge of the entire record and is responsible for it.

Mr. TANNAHILL.—Yes.

The SPECIAL EXAMINER.—And if it is left with someone else, it is not as liable to be kept as straight as the Stenographer will keep it; [334—4] and if that is satisfactory you can make that arrangement, that all exhibits be kept by him, and that they be marked by him, so that he knows what the paper is and just retain it.

Mr. TANNAHILL.—Yes.

Mr. GORDON.—If your Honor please, I make the motion that the witnesses on either side will be excluded from the courtroom during the hearing and during the testimony of any other witness. I assume that that is agreeable to counsel for the defendants?

Mr. TANNAHILL.—Yes.

The SPECIAL EXAMINER.—Well, that being the usual proper order in a case where it is desired, why the witnesses will take notice that all witnesses who are to appear in this case will be excluded from the courtroom, and will be called by an officer whenever they are required. They can keep themselves within distance just about the courtroom here and then whenever you are wanted an officer will call you.

Mr. GORDON.—I will ask all witnesses to keep themselves in readiness outside where they can be called.

The SPECIAL EXAMINER.—There is another matter: Mr. McLain is the regular Court Reporter, and I suppose sometimes in having new reporters you have them sworn. Do you want to have that done? Do you care to have the oath administered?

Mr. GORDON.—Why, I understand that Mr. Hamer is also a regular court reporter; but it is agreeable to me that both of them take the testimony without being sworn.

Mr. TANNAHILL.—That is satisfactory.

The SPECIAL EXAMINER.—Well, that is perfectly satisfactory, and the record will show that.



It was stipulated and agreed by and between counsel for the respective parties that the testimony to be taken at this hearing shall be taken down in shorthand by Charles W. McClain and Daniel Hamer, and that the same shall be by them transcribed into longhand, or typewriting, [335—5] and that it shall not be necessary to have the same read over to or signed by the various witnesses who may testify herein.

The following stipulation was presented and agreed to in open court:

*In the Circuit Court of the United States for the District of Idaho, Northern Division.*

IN EQUITY.—Nos. 388-406-407.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

WILLIAM F. KETTENBACH and Others,

Defendants.

**Stipulation [Concerning Testimony and Evidence].**

WHEREAS, Special Examiners heretofore have been appointed by the Court to take and hear the testimony in all of the above-entitled causes, and each of said causes charge conspiracy to defraud the United States of certain of its timber lands, and the Bill of Complaint in each of said causes specifically describes the several tracts of land sought to be recovered by the Government, and refers to the several patents sought to be cancelled;

With the view of speeding said causes to a hearing, and for the purpose of economy in the taking



of the testimony in said causes, and making of the record in the same for the Court, it is hereby stipulated and agreed by and between the respective parties to the above-entitled causes that the testimony of all of the witnesses of all the parties to the said causes produced and taken before said examiners heretofore appointed, or before any examiners or persons hereafter appointed by said Court, or agreed upon between the parties to these causes to act in such capacity in all of said causes shall be considered as having been taken in each and all of said causes, and shall go to make up the record in each and all of said causes, with the same force and effect as though said causes were consolidated, subject, however, to the defendants' objection made at the time of the introduction of any evidence so offered that the same is incompetent, irrelevant and immaterial.

It is further stipulated by and between the parties to said causes [336—6] that the evidence offered by and on behalf of any of said parties in any of said causes shall be considered as offered and received in evidence in all of said causes unless at the time of the offering of said evidence the party so offering the same shall specifically specify as to

which of said causes the same is offered.

(Signed:) PEYTON GORDON,  
Special Assistant to the Attorney General, Solicitor  
for Complainant.

JAMES E. BABB,  
Solicitor for Lewiston National Bank, Idaho Trust  
Company, Potlatch Lumber Company, Clear-  
water Timber Company, Frank W. Kettenbach,  
Defendants.

GEO. W. TANNAHILL,  
Solicitor for William F. Kettenbach, George H. Kes-  
ter, William Dwyer, Elizabeth White, Edna P.  
Kester, Martha E. Hallett, Kittie E. Dwyer,  
Defendants.

MORGAN & MORGAN,  
Solicitors for Western Land Company, Defendant.  
EUGENE A. COX,  
Solicitor for Elizabeth Kettenbach, Curtis Thatcher,  
Elizabeth W. Thatcher, and Elizabeth White,  
Defendants.

**[Testimony of Guy L. Wilson, for Complainant.]**

GUY L. WILSON, a witness called in behalf of  
the complainant, being first duly sworn, testified as  
follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Guy L. Wilson, is it?

A. Yes, sir.

Q. Where do you reside, Mr. Wilson? [337—7]

A. Clarkston.

Q. In the State of Washington?

A. Yes, sir.

(Testimony of Guy L. Wilson.)

Q. How long have you resided in Clarkston?

A. Ten years.

Q. Are you married?      A. Yes, sir.

Q. Of what does your family consist?

A. My wife and little girl.

Q. How long have you been married?

A. Eight years.

Q. What was your occupation in April, 1904?

A. Electrician.

Q. And are you following the same vocation now?

A. Yes, sir.

Q. Were you working for wages in 1904?

A. Yes, sir.

Q. And what was your salary at that time?

A. \$75.00 a month at that time.

Q. And were you working for the same concern by which you are employed now?      A. Yes, sir.

Q. And that is the Lewiston-Clarkston—

A. Improvement Company.

Q. Mr. Wilson, I show you Timber and Stone Land Sworn Statement dated April 25th, 1904, signed Guy L. Wilson, and ask you if that is your signature to that paper?      A. Yes, sir.

Q. And whether you filed the same in the land office at Lewiston about the date it bears?

A. Yes, sir. [338—8]

Q. I show you also the Non Mineral Affidavit of Guy L. Wilson, dated the same date, and ask you if that is your signature to that paper?      A. Yes, sir.

Q. I show you the testimony of Guy L. Wilson, dated July 13th, 1904, signed Guy L. Wilson, and



(Testimony of Guy L. Wilson.)

ask you if that is your signature to that paper?

A. Yes, sir.

Q. The paper last identified was the testimony that you gave on final proof? A. Yes, sir.

Q. I show you the cross-examination of Guy L. Wilson at the final proof, and ask you if that is your signature to that paper? A. Yes, sir.

Q. I show you the Receiver's Receipt, dated July 13th, 1904, and the Register's Certificate, of the same date, issued by those officials at the Lewiston land office to Guy L. Wilson, and ask if those papers were issued to you the date they bear?

A. Yes, sir.

Q. Mr. Wilson, who first spoke to you about taking up a timber claim? A. My father-in-law.

Q. And what was your father-in-law's name?

A. David Justice.

Q. And did he at that time reside at Clarkston, Washington? A. Yes, sir.

Q. And did you live with him? A. No, sir.

Q. Is Mr. David Justice alive now? A. No, sir.

Q. Was this conversation you had with Mr. Justice brought about [339—9] by yourself, or did he suggest it to you?

Mr. TANNAHILL.—If the Court please, we desire to object to any conversation with David Justice, on the ground that it is incompetent, irrelevant and immaterial, hearsay, not the best evidence, and the defendants cannot be bound by it; and we desire to object to any evidence in relation to the entryman's timber claim as the same applies to case

(Testimony of Guy L. Wilson.)

No. 388 and 407, upon the ground that it is irrelevant, incompetent and immaterial, and that it does not tend to prove or disprove any of the issues in either of those causes.

Mr. GORDON.—My last question was merely preliminary.

Mr. TANNAHILL.—Very well. Then we desire that this same objection go to all the witness' evidence, in order to avoid the necessity of repeating it—this last objection.

The SPECIAL EXAMINER.—Yes. The Stenographer can make that entry there, showing that the objection will apply to other similar testimony.

The last question was thereupon repeated by the Reporter.

WITNESS.—He had talked to me about it.

Mr. GORDON.—Q. Do you know Mr. William Dwyer, one of the defendants in this case?

A. Yes, sir.

Q. Did you ever talk with him about taking up a timber claim before you filed on one?

A. Yes, sir.

Q. Where was that conversation?

A. In his house.

Q. Where is his house?

A. At that time it was in Clarkston.

Q. And how long was it prior to the making of the application to enter one of these claims?

[340—10]

A. It must have been four or five months.

Q. What was said at that conversation?

(Testimony of Guy L. Wilson.)

A. I went up there to see him about getting this land, or taking a claim and to make arrangements to get the money to prove up with.

Q. I can't hear you.

A. To make arrangements to get the money to prove up with.

The SPECIAL EXAMINER.—Speak just a little louder, Mr. Wilson.

Mr. GORDON.—Q. Now, what arrangement did you go there to make with Mr. Dwyer about getting the money to prove up with?

Mr. TANNAHILL.—We object to that upon the ground that it is not the best evidence. The witness should be asked to state what was said between himself and Mr. Dwyer.

Mr. GORDON.—Answer the question, please.

A. I went to see him to get him to locate me on a claim, and see if he could procure the money for me to prove up with.

Q. Was Mr. Dwyer in the business of furnishing people money with which to prove up on timber claims?

A. I don't know. He was a locator.

Q. Well, what was said by Mr. Dwyer when you saw him on that occasion?

A. He said he thought he could borrow the money for me and get a claim in.

Q. Was that all that was said?

A. He said that I would have to pay him for locating me on the timber claim, and he told me about what the claim would be worth. That's about all



(Testimony of Guy L. Wilson.)

that I can remember that was said there.

Q. What did he tell you the claim would be worth?

A. Well, he said that after expenses would be paid and I had paid him for locating it would probably be worth \$150.00 to me.

Q. Is that the expression that he made? [341—11]

A. As near as I can remember it.

Q. Did Mr. Dwyer tell you that he would pay all your expenses, and that there would be \$150.00 in it for you?

Mr. TANNAHILL.—We object to that as leading and suggestive.

WITNESS.—He told me that—

Mr. GORDON.—Answer the question yes or no.

A. Well, I can't answer it yes or no and answer it as I want to.

Q. Please read the question again.

The SPECIAL EXAMINER.—Just read the question over, and if you can answer by yes or no, witness, you should do that, and then if you want to make any explanation after having answered the question it is all right to do so; but if it is a question that you can answer by yes or no of course it is the proper thing to answer that way. It makes a better record.

WITNESS.—Then if you will ask the question again.

The last question was repeated by the Reporter.

WITNESS.—No; I don't remember it just that way—after expenses were paid and the timber was sold that I would get about that much.

(Testimony of Guy L. Wilson.)

Mr. GORDON.—Q. That was the first conversation you had with him?

A. Yes, sir, as near as I can remember.

Q. Wasn't Mr. Dwyer to furnish all the expenses?

Mr. TANNAHILL.—The same objection, upon the ground that it is leading and suggestive.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. He was to pay your expenses of going to the timber, was he not?

A. Yes, sir.

Q. And pay your filing fee?

A. No; I don't know as I remember anything being said about that. [342—12]

Q. Well, was the expression to pay all your expenses? A. Yes, sir.

Q. And that was before you ever went to view the land? A. Yes, sir.

Q. And what were you to do with the land to get this \$150.00? A. I was to sell it.

Q. Who were you to sell it to?

A. Well, I didn't know at that time.

Q. Who was to control the negotiations for the sale?

A. Well, I suppose Mr. Dwyer was to sell it for me.

Q. Why did you wait for four months after that conference with Mr. Dwyer before you went to view the timber?

A. I think that the timber wasn't open for entry at that time.

Q. How long after that conversation you have related was it that you went into the timber?

(Testimony of Guy L. Wilson.)

A. I would just like to correct that other answer. I think that we went—it was after that; it was in two or three weeks, probably, that we went to look at the timber.

Q. Well, was there any reason why you didn't go the next day?

A. No, sir, no particular reason.

Q. Who notified you at the time you were to go to view this timber?

A. Well, I think my father-in-law told me, and Mr. Dwyer told me.

Q. Who arranged for the party—who made up the party?

A. Mr. Dwyer was taking the party up there.

Q. And did he tell you that on a certain day that he would take you into the timber?

A. He told me he was going and if I wanted to go I could go. He told me he was going, and if I cared to go I could go.

Q. How long was that before you went?

A. Well, I couldn't say. [343—13]

Q. Was it the day before, or the night before, or how long?

A. Well, it was within a day or two.

Q. Well, now, please state the circumstances and the facts that transpired on that trip, who was of the party, etc.

A. There was me, my mother-in-law and father-in-law.

Q. Well, now, name those.

A. Mr. and Mrs. Justice and Mr. O'Brien.



(Testimony of Guy L. Wilson.)

Q. What Mr. O'Brien?

A. Mr. O'Brien that lives in Clarkston, and Mr. Hopper, and myself.

Q. Now, Mrs. Justice, is it Mrs. Frances Justice?

A. Yes, sir.

Q. And what is her name now?

A. Mrs. Clausen.

Q. How do you spell that?

A. C-l-a-u-s-e-n.

Q. Where did you go from Lewiston to view the timber? A. We went up by Pierce City.

Q. Now, tell how you got there. You didn't walk—just please tell what happened. Don't make me ask all these questions.

A. We got on the train and went to Orofino and stayed there that night, and then we took horses and we went to Pierce City the next day, and the next day we went out to this timber, and that was about twelve miles, or quite a long way, I couldn't tell exactly how far it was, and we went out there, and we was there some time, a couple of hours, probably, and then we went back to Pierce City.

Q. Did you pay any railroad fare?

A. No, sir.

Q. Did you pay any hotel trip on that excursion?

A. No, sir.

Q. —any hotel bill on that excursion? [344—14]

A. No, sir.

Q. Did you pay for the use of the team driving from Pierce? A. No, sir.

Q. Did you make any arrangements for the team,

(Testimony of Guy L. Wilson.)

or was it there in waiting?

A. No, sir; I didn't make any arrangements at all.

Q. Who did you see when you got out into the timber?

A. A man there by the name of Mr. Bliss was the only one I saw.

Q. Did Mr. Dwyer go with you?      A. Yes, sir.

Q. Did he leave Lewiston with you?

A. Yes, sir.

Q. And did you stop at his camp up in the timber?

A. Yes, sir.

Q. Over night?      A. No, sir.

Q. How far was the claim on which you were located from Mr. Dwyer's cabin?

A. I don't know.

Q. Were you at the cabin?      A. Yes, sir.

Q. Did you ever go to the claim?

A. I suppose that I rode through it when I was going in there.

Q. Well, why did you suppose that?

A. Well, I knew that that was the timber, or supposed it was the timber. Mr. Dwyer said that was the timber we were to file on.

Q. You drove through how much timber?

A. Well, it was all timber, but then this was within I guess a couple of miles of his claim.

Q. And did he point out any particular claim?

A. I don't remember of any. [345—15]

Q. Did he just point out to the forest and say "This is the timber on which you are going to file your location"?

(Testimony of Guy L. Wilson.)

A. Well, I don't remember exactly what was said there at that time.

Q. Mr. Wilson, don't you remember that you never did go to view that timber claim on which you filed?

A. Not any more than I have told you.

Q. Do you remember whether or not Mr. Dwyer stood in his cabin and waved his hand out towards some timber and said that was the timber upon which you were going to file?

A. No, I can't say that I remember that.

Q. Then you returned to Lewiston?

A. Yes, sir; I returned to Pierce, and then to Orofino, and then to Lewiston.

Q. And you paid none of your expenses coming back either? A. No, sir.

Q. And it was several months after you returned to Lewiston before you filed on this land?

A. Yes, sir; it was the following spring I filed.

Q. Who advised you of the time that you were to file on this timber?

A. Mr. Dwyer told me that there was a line-up in the land office, and if I wanted to file to get in line.

Q. Did he just make the statement "if you want to file to get in line"; or did he tell you to get in line and file?

A. Well, I don't remember just exactly; but that was the substance of what he told me.

Q. Did you have any arrangement with Mr. Dwyer before you went to the timber as to the payment of a locating fee?



(Testimony of Guy L. Wilson.)

A. He told me I would have to pay him \$100.00 to locate me.

Q. Did he tell you that before he went to the timber?     A. Yes, sir. [346—16]

Q. Did he tell you that he would furnish you that \$100.00?     A. No, sir, I don't think he did.

Q. He was to furnish all the money, though?

A. Yes, sir.

Q. And you felt that you had obligated yourself to pay that \$100.00?     A. Well, I suppose I would.

Q. Now, don't say suppose. Answer the question directly, please.

Mr. TANNAHILL.—We object to that. The witness is answering his questions, and answering them fully, and counsel has no right to make any such remarks as that to the witness.

Mr. GORDON.—I have a right to make just such remarks as that. I asked him for a direct answer, and he said "I suppose," and I want a direct answer.

WITNESS.—Yes, sir.

Q. You say that is your understanding?

A. Yes, sir, that is my understanding.

Q. You felt under obligations to pay him that \$100.00?     A. Yes, sir.

Q. Who arranged for the preparation of this sworn statement that you filed in the land office?

A. The filing papers?

Q. Yes.

A. Why, they were made out in Mr. Smith's office.

Q. In Mr. I. N. Smith's office?

A. Yes, sir.

(Testimony of Guy L. Wilson.)

Q. My question was, who arranged with Mr. Smith for the preparation of those papers?

A. I don't know.

Q. Did you make any arrangement with him?  
[347—17] A. No, sir.

Q. How did you know that Mr. Smith was preparing those papers for you?

A. Well, I couldn't tell you now.

Q. Did you go to Mr. Smith's office to get them?

A. Yes, sir.

Q. Who told you to go there?

A. Well, I don't know now who did tell me.

Q. Didn't Mr. Dwyer tell you to go there and get those papers? A. I couldn't say.

Q. Somebody told you to go there and get them, didn't they? A. Yes, sir.

Q. Did you pay Mr. Smith any fee for preparing those papers? A. No, sir.

Q. Mr. Smith's office was in the same building as the land office was at that time, was it not?

A. Yes, sir.

Q. On the same floor as the land office?

A. Yes, sir.

Q. And you took the papers from Mr. Smith's office and went immediately to the land office to file them?

A. Yes, sir, the same day. I don't know that—

Q. Well, I didn't mean to use the expression "immediately." Did you see Mr. Dwyer in the building in which the land office and Mr. Smith's office

(Testimony of Guy L. Wilson.)

was, just after you received those papers from Mr. Smith?

A. Yes; I think he was there that day.

Q. Did he go with you to the land office when you filed the papers?

A. Well, I couldn't say whether he was in the land office or not.

Q. Where did you get the filing fee that you paid in the land [348—18] office when you filed your sworn statement and the other original papers?

A. Mr. Dwyer gave me the papers.

Q. Gave you what?

A. The papers. I didn't quite catch the question.

The SPECIAL EXAMINER.—Just repeat the question.

The Reporter thereupon repeated said question.

WITNESS.—Mr. Dwyer gave that to me.

Mr. GORDON.—Q. Gave you what?

A. The fee.

Q. Did he give you the papers too?

A. No, sir; I think I had gotten the papers of Mr. Smith—I am not sure, though.

Q. Had you just gotten them when he gave you the filing fee?

A. Well, I got them that same day, I don't know just how long.

Q. Well, you didn't intend to pay the filing fee, did you? A. No, sir, I don't think so.

Q. And you went to Mr. Smith's office and got the papers and waited for Mr. Dwyer to give you the money to pay the filing fee, didn't you?



(Testimony of Guy L. Wilson.)

A. Yes, sir.

Q. How much was that fee?

A. I can't tell you—somewheres about \$16.00 or \$17.00, I think.

Q. How long did you remain at the land office before you filed those papers?

A. I was— Remain at the land office?

Q. At the land office? A. I don't know.

Q. How long before the day that you could file those papers, that the land was open to entry, was it that you went to the land [349—19] office and formed yourself in line?

A. It was about a week, I think.

Q. How many people were in the line when you arrived there?

A. There must have been 15 or 20.

Q. You were employed at that time, were you not?

A. Yes, sir.

Q. How long did you remain in the line?

A. Not so very long—an hour and a half a day, possibly.

Q. Did you when you went there intend to remain in the line the seven days?

A. No, sir—I couldn't. I was working; I couldn't stay there.

Q. Well, did you make any arrangements with somebody to hold your place? A. Yes, sir.

Q. Who suggested that to you?

A. Well, I think Mr. Dwyer told me if I wanted to hold my place that I would have to get somebody else, or I would have to get someone else to stay there in line.

(Testimony of Guy L. Wilson.)

Q. Did you get someone or did Mr. Dwyer get someone?     A. I got someone.

Q. Who held your place, or who held your position?     A. Mr. Case.

Q. Well, he held your place for several days, did he?     A. Yes, sir.

Q. But where did you go to procure the services of Mr. Case to hold your position?

A. Why, he was staying at my place at that time, and of course I went home and got him.

Q. Who held your place in line while you went home?     A. Well, I don't know as anybody did.

Q. Was there any arrangement made between you and Mr. Dwyer as [350—20] to who should pay for the services of Mr. Case?

A. No, I can't say positively now just about that. I paid him in the end.

Q. You did what?

A. I paid him in the end.

Q. Well, who paid him in the beginning?

A. Mr. Dwyer paid him, and I paid Mr. Dwyer.

Q. Mr. Dwyer gave you a check for that purpose, didn't he?     A. Yes, sir.

Q. Of fourteen dollars and something?

A. I think it was \$14.00.

Q. That was how much a day?     A. \$2.00 a day.

Q. After the filing of your papers in the land office did you have any conversation with Mr. Dwyer as to the final proof money?

Mr. TANNAHILL.—We object to that as incompetent, irrelevant and immaterial.

(Testimony of Guy L. Wilson.)

WITNESS.—I must have had a conversation, but I don't remember now just what it was.

Mr. GORDON.—Q. Well, did he come to see you with the money when it came time to make proof, or did you go to see him?

A. Well, I met him in the land office, in Mr. Smith's office, and got the money, but I don't remember just how I happened to go there. Of course, I know somebody must have told me, but I don't remember just when it was or any of the particulars about it.

Q. Had Mr. Smith ever attended to any business for you?

A. No, sir, not outside of making those papers.

Q. And you didn't procure him to do that?

A. No, sir.

Q. And was there any arrangement that you should go to Mr. [351—21] Smith's office to meet Mr. Dwyer to get the money to make final proof?

A. None that I know of.

Q. Well, how did you happen to go there, then?

A. Well, I expect Mr. Dwyer told me to meet him there, or something like that. I am not—

Q. Had you any talk with Mr. Dwyer, prior to the day of making final proof, about the final proof money? A. Prior to the day?

Q. Yes? A. I don't remember of any.

Q. Do you remember of an occasion of Mr. Dwyer coming to your house with his wife to see you about the final proof?

A. Mr. Dwyer and his wife were there at one time, yes, sir.



(Testimony of Guy L. Wilson.)

Q. And don't you know that he came to see you for that purpose?

A. Well, I can't recall just exactly. I know he came there to see me, but I don't remember all that was said. I don't know whether that was mentioned or not.

Q. Do you remember anything that was said on that occasion?

A. No, I don't know as I can. I don't know as I remember it now.

Q. Do you remember that Mr. Dwyer and his wife drove up there one evening, shortly before the time you made final proof, and were waiting when you came home from your work?      A. Yes, sir.

Q. And do you remember whether or not Mr. Dwyer told you he had come to see you and talk with you about the questions that you were to answer in making your final proof?

Mr. TANNAHILL.—We object to that as incompetent, irrelevant and immaterial; and we desire that this same objection go to all of the examination of the witness relative to the final proof or any questions in relation to the making of the final proof.

WITNESS.—I remember Mr. Dwyer coming there and we had a conversation, [352—22] but I don't know—I couldn't say positive what that conversation was now.

Mr. GORDON.—Q. Do you know what it pertained to—what was discussed?

A. It pertained something to answering questions, but I couldn't recall the conversation.

(Testimony of Guy L. Wilson.)

Q. Do you remember whether he went over the questions that you were to answer, as to where you were to get the money, or where you got the money to make this final proof?

A. I remember going over the questions, I don't remember just all of them. I don't know just what was said there.

Q. Well, tell as much of it as you can remember.

A. I remember of him being there and telling me how I might answer some of the questions.

Q. Now, what questions did he tell you how you should answer?

A. Well, he told me something about answering where I got the money and how long I had had it, and I think that's about all that I remember.

Q. What did he tell you to say about it?

A. Well, as near as I can remember he told me—of course, I had borrowed this money, and the money was mine, and to say it was mine.

Q. Is that what he told you to say?

A. That is as near as I can remember.

Q. Now, when Mr. Dwyer had paid you that visit why you hadn't gotten the money at that time, had you? A. No, sir.

Q. Who was present at that conversation besides yourself and Mr. Dwyer? A. My wife was all.

Q. Mrs. Dwyer was present?

A. Yes, sir, Mrs. Dwyer was there. [353—23]

Q. Now, do you remember whether there was anything said at that conversation relative to what you should say as to whether or not you had an agree-

(Testimony of Guy L. Wilson.)

ment to sell that land?

A. No, sir, I don't remember anything about that.

Q. You have no remembrance whatever?

A. Not of that, no, sir.

Q. Do you remember whether he argued the question with you that you could conscientiously say that you didn't have an agreement because it wasn't in writing—merely a verbal agreement between you and him?

A. Mr. Dwyer told me some time or other in our discussions that I had no agreement with him, but I don't know whether at that time he did or not.

Q. Now, what brought up the contention whether or not you had an agreement with him?

A. Probably it must have been how I was to answer the questions, likely, in the land office.

Q. Do you remember of him telling you that you didn't have an agreement with him because it wasn't in writing?

A. No, I can't say that I remember it just that way.

Q. Do you remember asking him whether or not you would have to perjure yourself?

A. Yes, sir, I think I asked him that question.

Q. And that he told you no, or words to that effect; that it wasn't an agreement because it was a mere verbal arrangement between you and him, and that nobody knew anything about it but you and him?

Mr. TANNAHILL.—We object to that as leading and suggestive, and irrelevant and immaterial.

WITNESS.—No, sir. I remember of him telling



(Testimony of Guy L. Wilson.)

me that there was no agreement; but, as I said before, I don't remember whether it was at that time or some other time.

Mr. GORDON.—Q. Do you remember how he argued why you had no agreement? [354—24]

A. Why, I don't know as we argued any about it. I can't say whether it was that time. I don't remember very much about it, what was said at that time.

Q. Well, don't you remember that you had a similar talk with—or a talk with Mr. Dwyer on the same subject, before you made your sworn statement?

A. Well, he has told me—he had told me two or three times that I didn't have any agreement with him.

Q. Didn't he tell you that before you made your sworn statement? A. I think so.

Q. And didn't he tell you that you were taking it up for your own use and benefit, because you would be benefitted by it? A. Yes, sir.

Q. After this last conversation you had with him before making proof, do you remember whether there was any arrangement made where you should meet Mr. Dwyer to get the money to make your proof?

A. No, sir, I have no remembrance of how— Of course, I know I must have been told to go there—I knew I was going to get the money, but I don't remember much more than that.

Q. And you went to Mr. Smith's office and met Mr. Dwyer at his office? A. Yes, sir.

(Testimony of Guy L. Wilson.)

Q. And was there any money given you at that time?

A. Yes, sir. I was there given the money to—

Q. How much was given you?

A. The money to make final proof, and \$100.00 more.

Q. And how much was that altogether?

A. Well, that was something over \$500.00.

Q. And what was said about the \$100.00 more that you referred to?

A. Well, I was to—that was my locating fee; I was to pay that back. [355—25]

Q. Now, state exactly what was said about that.

A. Mr. Dwyer told me to give it back to him, and I did, and he said I had paid him for locating me.

Q. Repeat that, please.

A. Mr. Dwyer, after he gave me this \$100.00, why he told me to give it back to him, and I did, and he said I had paid him for locating me.

Q. In other words, he gave you an extra \$100.00, and then said “Now, give me that back and that will pay my locating fee”? Is that correct?

A. Something to that effect.

Q. Do you remember whether the money that was given you was in gold or paper money?

A. I don't remember. Part of it was in paper, I know.

Q. Wasn't the \$100.00 a hundred dollar bill?

A. Yes, sir.

Q. And wasn't the \$400.00 in gold?

A. Well, I am not sure what the \$400.00 was.

(Testimony of Guy L. Wilson.)

Q. What is your best recollection?

A. Well, I couldn't say positive. It might have been gold or it might have been paper.

Q. And did you go to the land office immediately from Mr. Smith's office and make your final proof and pay this \$400,00 in the land office?

A. Some time in the morning I done that, yes, sir.

Q. And they gave you a receipt for it at the land office?      A. Yes, sir.

Q. And what did you do with that receipt?

A. I took it with me and went over to Mr. Kettenbach's office, and I made a deed there.

Q. Now, let me get this straight: Which of the Kettenbachs did [356—26] you go to?

A. Mr. Otto Kettenbach.

Q. Mr. Otto Kettenbach?      A. Yes, sir.

Q. And do you know the kinship he bears to Mr. William F. Kettenbach?      A. No, I don't.

Q. Now, at the time that Mr. Dwyer gave you the \$400.00, did you give him any security for it at that time?      A. Yes, sir.

Q. Right at that time?      A. Yes, sir.

Q. Did you give it to him before you paid the money into the land office or afterwards?

A. Before I paid the money.

Q. When were you to repay that note?

A. I didn't know at that time. That note was made payable on demand, I think.

Q. And to whom was the note made payable?

A. It was made to Kester and Kettenbach, I think.

Q. William F. Kettenbach and George H. Kester,



(Testimony of Guy L. Wilson.)

or was it just Kester and Kettenbach?

A. I am not sure how it was.

Q. And did that note bear interest?

A. I couldn't say whether it did or not.

Q. And you say that was just before you made your proof?     A. Yes, sir.

Q. And you made your proof in the forenoon of that day?     A. Yes, sir.

Q. And you went directly from the land office to Mr. Otto Kettenbach's office and made a deed?

A. No, not directly, I think. [357—27]

Q. Well, now, state how long it was, if you remember?     A. Well, it was probably two hours.

Q. Two hours?     A. Yes, sir.

Q. What were you doing in that two hours?

A. I went to dinner.

Q. Then you didn't go to Mr. Otto Kettenbach's till after dinner?     A. No, sir.

Q. And was it arranged that you were to go to Mr. Otto Kettenbach's, before you went to dinner?

A. Yes, sir; I think so.

Q. Was it arranged before you went to the land office?     A. No, sir; not that I know of.

Q. Well, you say "not that you know of"?

A. No, sir. Why, no.

Q. You don't know whether anybody else made any arrangement?     A. No, sir; I don't think so.

Q. Now, did Mr. Dwyer go to the land office with you when you made your proof?

A. I think Mr. Dwyer was around there. I am not sure whether he was in the land office or not.

(Testimony of Guy L. Wilson.)

Yes, I think he was.

Q. And when did you make the arrangement to go to Mr. Kettenbach's office?

A. Why, I think after I had proven up.

Q. Well, between the time you proved up and when you went to dinner, is that right?

A. Yes, sir; I think so.

Q. Well, how long was that?

A. Well, it wasn't very long; it was inside of an hour.

Q. And was that the first that was said to you about selling [358—28] your land?

A. That is the first, yes, sir, outside of that one conversation at his house.

Q. That was the first time he went to see you?

A. Yes, sir.

Q. Who told you to go to Mr. Otto Kettenbach's office? A. I think Mr. Dwyer told me to.

Q. And did you know what you were to do when you went to Mr. Kettenbach's office? A. Yes, sir.

Q. Well, please tell what it was—what the arrangement was?

A. Why, I can't remember exactly. I knew I was to go over there and make out a deed; that's all I knew.

Q. And what were you to get for making out that deed? A. I was to sell the land there.

Q. Who were you to sell it to?

A. Well, I didn't know until the deed was made out who I was to sell it to.

Q. Well, to whom was the deed made out?

(Testimony of Guy L. Wilson.)

A. The deed was made out to Kester and Kettenbach.

Q. Which Kester?

A. Well, I don't know. I don't remember. I remember the names of Kester and Kettenbach being on the deed.

Q. Do you know of any other Kester and Kettenbach than William F. Kettenbach and George H. Kester?

A. Well, there is other Kettenbachs, but I think it was George H. Kester and William F. Kettenbach, but I don't remember the initials on the deed.

Q. Now, when you made out this note to Mr. Dwyer, what did you do with it?

A. I gave it to him. [359—29]

Q. And when you made out the deed—which was the same day, wasn't it? A. Yes, sir.

Q. What did you do with the deed?

A. I turned it over to Mr. Dwyer.

Q. When did you see the note again?

A. I never seen the note after that.

Q. Do you know what became of the note?

A. Yes, sir.

Q. What became of it? A. My wife got it.

Q. When did she get it?

A. I think that same afternoon.

Q. Where did she get it?

A. She got it at the bank.

Q. Which bank?

A. The Lewiston National Bank.

Q. Do you know who gave it to her at the bank?



(Testimony of Guy L. Wilson.)

A. No, sir; I don't.

Q. Do you know who told her to go to the bank and get the note?

A. I think Mr. Dwyer told her the note was in the bank there.

Q. How long was that after you made the deed?

A. It was the same afternoon.

Q. The deed was made after two o'clock, was it?

A. Well, I don't know. It was some time right after dinner. I don't know just what time it was.

Q. Well, the reason I put my question that way was, I understood dinner in this locality was between 12 and 2? A. Yes, sir.

Q. And you went over to Clarkston to your dinner? A. No, sir; I ate dinner in town.

Q. Did you hear Mr. Dwyer tell your wife to go and get the note? [360—30]

A. No, I don't remember that I did.

Q. Where were you when she went to get the note?

A. I was at work.

Q. Why didn't you go and get your note?

A. Well, I don't know. I was busy, and as soon as the deed was signed and the thing straightened up I went right to my work.

Q. Did you go to work on the street or up to the office where you were employed?

A. I went to the office first, but I don't remember now where I worked.

Q. Let us get these localities now: Where was the note—in which bank?

A. The Lewiston National Bank.

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2209.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,  
CLARENCE W. ROBNETT, WILLIAM DWYER,  
and FRANK W. KETTENBACH,

Appellees.

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THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2210.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,  
CLARENCE W. ROBNETT, WILLIAM DWYER,  
THE IDAHO TRUST COMPANY, a Corporation,  
THE LEWISTON NATIONAL BANK, a Corpora-  
tion, THE CLEARWATER TIMBER COMPANY,  
a Corporation, ELIZABETH W. THATCHER,  
CURTIS THATCHER, ELIZABETH WHITE,  
EDNA P. KESTER, ELIZABETH KETTEN-  
BACH, MARTHA E. HALLETT, and KITTY  
E. DWYER,

Appellees.

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THE UNITED STATES OF AMERICA,

Appellant,

vs.

No. 2211.

WILLIAM F. KETTENBACH, GEORGE H. KESTER,  
and WILLIAM DWYER,

Appellees.

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Transcript of Record.

VOLUME II.

(Pages 401 to 800 Inclusive.)

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Appeals from the District Court of the United States for the  
District of Idaho, Central Division.

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**Nos. 2209, 2210 AND 2211.**

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**United States  
Circuit Court of Appeals  
For the Ninth Circuit.**

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THE UNITED STATES OF AMERICA,

Appellant,

vs.

**No. 2209.**

WILLIAM F. KETTENBACH, GEORGE H. KESTER,  
CLARENCE W. ROBNETT, WILLIAM DWYER,  
and FRANK W. KETTENBACH,

Appellees.

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THE UNITED STATES OF AMERICA,

Appellant,

vs.

**No. 2210.**

WILLIAM F. KETTENBACH, GEORGE H. KESTER,  
CLARENCE W. ROBNETT, WILLIAM DWYER,  
THE IDAHO TRUST COMPANY, a Corporation,  
THE LEWISTON NATIONAL BANK, a Corpora-  
tion, THE CLEARWATER TIMBER COMPANY,  
a Corporation, ELIZABETH W. THATCHER,  
CURTIS THATCHER, ELIZABETH WHITE,  
EDNA P. KESTER, ELIZABETH KETTEN-  
BACH, MARTHA E. HALLETT, and KITTY  
E. DWYER,

Appellees.

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THE UNITED STATES OF AMERICA,

Appellant,

vs.

**No. 2211.**

WILLIAM F. KETTENBACH, GEORGE H. KESTER,  
and WILLIAM DWYER,

Appellees.

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**Transcript of Record.**

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**Appeals from the District Court of the United States for the  
District of Idaho, Central Division.**

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United States

Circuit Court of Appeals

For the Ninth Circuit.

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THE UNITED STATES OF AMERICA,

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WILLIAM F. KETTENBACH, GEORGE H. KESTER, CLARENCE W. ROBNETT, WILLIAM DWYER, and FRANK W. KETTENBACH,

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Appeals from the District Court of the United States for the  
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(Testimony of Guy L. Wilson.)

Q. And how far was that from Otto Kettenbach's office?     A. Why, it is about a block.

Q. Didn't you have to go by the Lewiston National Bank from Otto Kettenbach's office to get to your place of employment?

A. No, sir; the bank is across the street from where the office was.

Q. Was the bank directly across the street from your office?     A. Yes, sir.

Q. Just on Main Street?     A. Yes, sir.

Q. Was it diagonally across, or right directly in front of it?

A. I think it is right straight across.

Q. And was Kettenbach's office on Main Street, too?     A. Yes, sir.

Q. And that was just a block away?

A. It was a block west, yes, sir.

Q. Was there any reason for your wife going to get that note, other than that you didn't want to be known in that transaction?     [361—31]

A. There was reason—the timber had been sold—I didn't want anyone to hold a note against me.

Q. Why didn't you go to get it?

A. Well, I don't know why. I could have went, but I was busy, and my wife was there, and I just told her to go and get it; that is the only reason I know.

Q. It wouldn't have taken you only a few minutes longer, would it?

A. No, I don't know as it would.

Q. When you signed the deed at Mr. Kettenbach's

(Testimony of Guy L. Wilson.)

office, did you get any more money?

A. I got \$136.00.

Q. And the arrangement was that you were to get \$150.00?

A. Well, the arrangement was—I thought that is what I would get, after all expenses were paid.

Q. And why didn't you get the \$150.00?

A. Well, I had to pay this other fellow \$14.00.

Q. Mr. Dwyer kept that \$14.00 out, did he?

A. Yes, sir.

Q. What did Mr. Dwyer say to you after you made your proof, about going to Kettenbach's office to make a deed? A. I don't remember.

Q. He just told you to go there and make a deed?

A. I can't recall what he told me. Of course, I knew I had to go over there, but I don't remember the words that he told me.

Q. From the very first talk with Mr. Dwyer about taking up the timber claim, Mr. Wilson, Mr. Dwyer directed every movement you made in relation to it, didn't he?

Mr. TANNAHILL.—We object to that as calling for a conclusion of the witness and not a statement of fact; and on the further ground that the witness cannot intelligently answer the question. In other words, [362—32] it is not a question, and it is leading and suggestive.

Mr. GORDON.—Answer the question.

WITNESS.—Not altogether; no.

Q. What initiative did you take in it?

A. I didn't have any. Of course, I wanted to get



(Testimony of Guy L. Wilson.)

a timber claim, that's all.

Q. The whole matter turned out just exactly as it was outlined to you by Mr. Dwyer the first time you talked with him, did it?     A. Yes, sir.

Q. And you got just exactly what you expected to get, with the exception of the \$14.00 you paid to Mr. Case, is that right?     A. Yes, sir.

Q. Mr. Wilson, do you remember the cross-examination which you identified here as being the same that was put to you at the land office when you made your proof?

Mr. TANNAHILL.—We object to that as irrelevant, incompetent and immaterial, and upon the further ground that the cross-examination of the witness is not in evidence.

WITNESS.—I don't remember very much of it.

Mr. GORDON.—Q. Do you remember this question being asked you: Question No. 16, on cross-examination?

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—Q. "Did you pay out of your own individual funds all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?" and you made the answer "Yes"?     A. Yes, sir; I remember that.

Q. Do you remember this question being asked you at the same time: Question No. 17: "Where did you get the money with which to pay for this land, and how long have you had the same in your actual [363—33] possession?" to which you answered, "I saved it from my earnings, two and a half years"?

(Testimony of Guy L. Wilson.)

Mr. TANNAHILL.—The same objection.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. Mr. Wilson, didn't you know that those answers were not true at that time?

Mr. TANNAHILL.—The same objection.

WITNESS.—Well, to a certain extent I knew they were not.

Mr. GORDON.—Q. You knew that you had gotten the money—not two years and a half before, but you had gotten it from the defendant Dwyer, within an hour of before you went to the land office and made that statement, didn't you?

Mr. TANNAHILL.—The same objection.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. Why did you answer those questions that way?

Mr. TANNAHILL.—The same objection.

WITNESS.—Well, I had thought it was all right, I guess, to answer them that way.

Mr. GORDON.—Q. You thought it was all right to make a false statement, did you?

A. Well, I don't think at that time that I really thought much about it. I didn't think at that time I was doing any more than other people were doing.

Q. Did somebody tell you that?

Mr. TANNAHILL.—The same objection.

WITNESS.—No, I don't know as they did; it was common talk.

Mr. GORDON.—Q. I will ask you directly: Did Mr. Dwyer make that excuse to [364—34] you?

A. I don't know as he did.



(Testimony of Guy L. Wilson.)

Mr. GORDON.—We offer in evidence the Timber and Stone Sworn Statement of Guy L. Wilson, dated April 25th, 1904, the Nonmineral Affidavit of Guy L. Wilson, of the same date, the Notice of Publication of Guy L. Wilson, of the same date, the testimony of Guy L. Wilson on final proof, and the cross-examination thereof, the Receiver's Receipt, and the Register's Certificate, dated July 13th, 1904, the testimony of the witnesses given on final proof, the certified copy of the patent, dated December 31st, 1904, for all of lots 3 and 4, and the northeast quarter of the southwest quarter, and the northwest quarter of the southeast quarter of section 19, in township 39 north, of range 5 east, Boise meridian.

Mr. TANNAHILL.—Objected to upon the ground that they are irrelevant, incompetent and immaterial, and especially immaterial and irrelevant for any purpose, and especially in so far as they relate to case No. 388, and 407, and that they do not tend to prove or disprove any of the issues in either of the cases in which they are offered. The defendant waives any further identification as to the signatures of the officers, and admits that they are files and records of the office of which they purport to be files and records.

Said documents were thereupon marked by the Reporter as Exhibits 1, 1A, 1B, 1C, 1D, 1E, 1F, 1G, 1H, 1I, 1J, 1K, and 1L. [365—35]

Mr. GORDON.—Q. Mr. Wilson, I want to get clear what transpired between you and Mr. Dwyer after you made your proof and before you went to



(Testimony of Guy L. Wilson.)

Otto Kettenbach's office to make the deed. Were you told what you were to go there to do?

A. I presume I was.

Q. Well, now, you presume—

A. That would be my best recollection, that I was.

Q. Do you remember whether you had any discussion as to the sale of the land, or had that been arranged before?      A. I don't remember of any.

Q. There wasn't anything said about it?

A. Not that I remember of.

Q. You were proceeding on the understanding you had with Mr. Dwyer when you first talked with him about it?      A. Yes, sir.

Q. And the \$136.00 that was paid you in Mr. Kettenbach's office, did you tell me who gave you that?

A. Mr. Dwyer gave it to me.

Q. Was it a check?      A. No, sir.

Q. In cash?      A. Yes, sir.

Q. You had had no discussion with Mr. Dwyer as to what you were to sell the claim for, between the time you first spoke to him about the claim and the time he gave you the \$136.00, had you?

A. No, sir.

Q. It never had been mentioned, how much you were to get for it?      A. I think not.

Q. And there was nothing said at that time about that? He just gave you the \$136.00?

A. Yes, sir.

Q. Mr. Wilson, do you remember now whether you got the sworn statement from Mr. I. N. Smith's office, or whether Mr. Dwyer brought it to you?

(Testimony of Guy L. Wilson.)

A. Is that the final proof papers?

Q. No, that was the first paper you filed in the land office.

A. I am not sure where I got that, whether I got it from Mr. Dwyer or Mr. Smith.

Q. Don't you remember discussing some matters in that paper with Mr. Dwyer before you filed it?

A. No, I don't remember now.

Q. Do you remember testifying at two or three former trials involving these matters, these same matters?     A. Yes, sir.

Q. And two of those trials were had in 1907, you remember that?     A. Yes, sir.

Q. One against Mr. William F. Kettenbach and the other against Mr. William Dwyer?

A. Yes, sir.

Q. And do you also remember testifying in the same cases against the same defendants in February last, at Boise?     A. Yes, sir.

Q. Now, do you remember reading the testimony over, the testimony that was given at the former trial over, just prior to the trial at Boise last February?     A. Yes, sir; I read some of it over.

Q. And where did you get that testimony that you read?

A. The first that I got I borrowed from Mr. Kester.

Q. Which Mr. Kester?     A. George Kester.

Q. And he was one of the defendants in those cases?     A. Yes, sir.

Q. You say the first you got of it. What do you

(Testimony of Guy L. Wilson.)

mean by that?

A. Well, that was the first time I read it.

Q. How long was that before the trial in February?

A. Well, I don't know. It was probably a couple of weeks, something like that,—maybe longer.  
[367—37]

Q. And you read over the testimony that you had given on the two former trials? A. Yes, sir.

Q. Where did you get that testimony?

A. I got it from Mr. Kester.

Q. Well, now, tell the circumstances of getting it.

A. Well, I got it, I went with him up to his sister's room. I told him I wanted to look the testimony over, and asked him if he had a copy, and he said he did, and I think my wife and I both went up to his sister's to get it.

Q. Did you stay there and read it over?

A. I didn't read any there at all.

Q. You took it away with you?

A. I took it home with me.

Q. Did your wife read over her testimony?

A. I don't know whether she did or not.

Q. Did that testimony refresh your recollection any? A. Why, I don't know as it did.

Q. Mr. Wilson, I wish to invite your attention to what purports to be some portions of the testimony that you gave at Moscow, in the case of United States vs. William Dwyer, at the May term, 1907, with the view of seeing if this refreshes your recollection as to any of these matters. I read from page 183,



(Testimony of Guy L. Wilson.)

case No. 1606, transcript of the record that is referred to in the stipulation made by counsel yesterday. I think it is all in Volume 1. From the context of what goes before the question I shall read you, the question relates to a conversation you had with Mr. Dwyer before you went to view the land, the first talk you had with him. I will ask you if you remember this question being asked you and the answer which I shall read being made by you: "Well, now, state the conversation you had there with Dwyer in relation to it, what he said. Answer. Well, Mr. Dwyer said all our expenses would be paid and we would get about, when we could turn these over, he could make about a hundred and fifty dollars out [368—38] of this for us. Question. Now, give the exact language, so that these jurors can hear it, what he said to you. Answer. Well, he said that it would not cost us anything to take the trip, and that there would be about a hundred and fifty dollars in it for me." Do you remember those questions being put to you and those answers being made by you? A. Yes, sir.

Mr. TANNAHILL.—We object to it as irrelevant and immaterial and leading and suggestive. It is improper to refresh the witness' memory in that way, and it is immaterial and improper for the reason that the witness has not shown himself to be an unwilling witness, but is simply testifying to the truth as nearly as he can remember it.

Mr. GORDON.—Q. On page 193 of the same record, I will read the following questions and an-

(Testimony of Guy L. Wilson.)

swers that are purported to have been made by you at the same trial, and ask you whether you remember the questions being asked, and whether you remember the answers being made as I shall read them. From the context of what goes before the question it would seem to be the conversation you had with Mr. Dwyer just after you got your sworn statement from Mr. Smith's office. "Question. Now, then, take that paper which you have already recognized as the paper that was made out in I. N. Smith's office for you and read it over and state what conversation you had with Dwyer at that time, and to what particular subject in that paper the conversation was directed. Just read it over now and speak loud enough so that this most distant juror can hear you. Answer. Do you want me to read this? Question. Yes, read it. Do it in your own way. Answer. Well, it said that I did not directly or indirectly make any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself, and my postoffice address. He said that this agreement that I had with him was only verbal, and that wouldn't stand in the road at all, that I was taking this land up for myself, that I would derive the benefit from it." [369—39] Do you remember that question being asked you and that answer being made by you? A. Yes, sir.

Q. Was it true?

(Testimony of Guy L. Wilson.)

A. Well, there was only one thing that don't look right to me, and that was the first question he asked me.

Q. Was this question asked you: "Did you know at that time that this statement that I have not directly or indirectly made any agreement or contract or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure to the benefit of any person except myself. Did you know that that statement was untrue? Answer. Yes, sir." Was that question asked you and that answer made by you?

Mr. TANNAHILL.—We object to that as repetition, and as irrelevant and immaterial, and not proper direct examination, and seeking to contradict his own witness.

A. I think I remember.

Mr. GORDON.—Q. Was this question asked you: "At the time you made it?" And your answer: "Yes, sir." Do you remember that question being asked you and that answer being made?

Mr. TANNAHILL.—The same objection.

A. Yes, sir.

Mr. GORDON.—Q. Was this question asked you: "Well, what induced you to make, or who induced you to make these false statements? Answer. Well, Mr. Dwyer did it." Was that question asked you and that answer made by you?

Mr. TANNAHILL.—The same objection.

A. Yes, sir.



(Testimony of Guy L. Wilson.)

Mr. GORDON.—Q. And that testimony that you gave, then, was true?     A. I think so. [370—40]

Q. Was this question asked you: “Now, then, what we want to get at is, what did Mr. Dwyer say to you that induced you to make these false statements? Answer. Well, he said that it was nothing more out of the way than other people was doing, that I was taking this land up for my own benefit, and that as long as no one else but himself and I knew about this contract there would not be anything wrong about it.” Was that question asked you and that answer made by you?

Mr. TANNAHILL.—The same objection.

A. Yes, sir.

Mr. GORDON.—Q. And were they true?

A. I don’t remember that conversation now.

Q. I will ask you whether or not this conversation wouldn’t be fresher in your mind three or four years ago than it is now.     A. Yes, sir; I think so.

Q. You may have forgotten some of it at the present time?     A. Yes, sir.

Q. Was this question asked you: “Did you file, did you make this affidavit then pursuant, as a result of that conversation you had with Mr. Dwyer? Answer. Yes, sir.” Do you remember that question being asked and that reply being made by you?

Mr. TANNAHILL.—The same objection.

A. Yes, sir.

Mr. GORDON.—Q. And when you so testified in the trial of Mr. Dwyer your testimony was true, was it not?     A. Yes, sir; that was.

(Testimony of Guy L. Wilson.)

Q. Do you remember this question being asked you at that trial: "Now, did you have any conversation with Mr. Dwyer in the meantime after you had filed and from that on until about the time that you were to make your final proof? Answer. I had one conversation with him that I remember of. Question. Well, now, relate when and where was that conversation. Answer. Well, it was out at my place at Vineland." Do [371—41] you remember those questions being asked you and those answers being made by you?

Mr. TANNAHILL.—The same objection.

A. Yes, sir.

Mr. GORDON.—Q. Was this question asked you: "Well, this conversation was shortly before you made your final proof? Answer. Yes, sir." Do you remember that question being asked you and that answer being made by you? A. Yes, sir.

Q. Were these questions and answers which I shall proceed to read asked and the answers made by you in response thereto: "And this conversation was shortly before you made your final proof? Answer. Yes, sir. Question. But you had not made, had any conversation in the meantime about this subject since you filed, up to this time? Answer. None that I remember of. Question. None that you recall. Now, what did that conversation between you and Mr. Dwyer relate to that you had at Vineland? Answer. Well, it related as to how I should answer some of the questions that would be asked at the time I proved up." Do you remember those ques-

(Testimony of Guy L. Wilson.)

tions being asked and those answers I have read being made by you?

Mr. TANNAHILL.—The same objection.

A. I remember some of them; I can't say as to all of them.

Mr. GORDON.—Q. Does that refresh your recollection as to the transaction? A. A little, yes.

Q. Then follows this question and answer: "Now, what did Mr. Dwyer state to you at that time concerning this? Relate the conversation that occurred there. State it distinctly so we can all hear it. Answer. Well, there would be one question asked me, where I got the money, and he told me to tell them that I had saved this money, and another one that I remember was that if the question would be asked me how long I have had this money, and he said, 'You can tell them that [372—42] you have had it or the equivalent for a good many years, being as you owned this place in Vineland two or three years. You can answer it in that way.' " Do you remember those questions being asked and that answer made?

Mr. TANNAHILL.—The same objection.

A. Yes, sir.

Mr. GORDON.—Q. Do you remember this question being asked you, when the district attorney had handed you the testimony and the cross-examination on final proof, and after reading it over you made this answer: "The question was, 'Have you sold or transferred your claim?' And Mr. Dwyer said, he told me it was only an agreement between him and



(Testimony of Guy L. Wilson.)

I, and that it would be all right for me to say no to that, and about making the entry in good faith, why, it was for the benefit of me. Question. What did he say? Answer. Well, he said, 'You have taken this land up for yourself and will derive the benefit from it after you prove up and get your receipt.' '' Do you remember those questions being asked you and those answers made by you?

Mr. TANNAHILL.—The same objection.

A. Yes, sir.

Mr GORDON.—"Question. We will come directly to the point, Mr. Wilson. You recognize these as the questions which were asked you and the answers which were given by you in the land office? •

Answer. Yes, sir. Question. To the question, 'Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract or in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except yourself?' you answered 'No.' Was that statement by you, was that answer true at the time you made it? The answer was, no, sir. Question. Did you know it was not true? Answer. Yes, sir." Do you remember those questions being asked you and those answers being made by you?

Mr. TANNAHILL.—The same objection. [373—43]

A. Yes, sir.

(Testimony of Guy L. Wilson.)

Mr. GORDON.—Q. Were you telling the truth when you testified in that trial of Mr. Dwyer?

A. I aimed to tell the truth, with the exception of there was just one thing there that I didn't think was just right.

Q. What was that?

A. That was the first conversation I had.

Q. What makes you think that wasn't true?

A. Well, I have thought over it a good many times, and I don't believe it was; that is the only thing I can say.

Q. Do I understand now that you went on the stand in behalf of the Government in two of these cases and made an assertion, and swore to it, and when asked if you were telling the truth said, yes?

A. I aimed to tell it.

Mr. TANNAHILL.—The same objection.

A. I aimed to tell the truth, of course, the same as I am now, but afterwards, after I thought over that, there was one thing I was in doubt about.

Mr. GORDON.—Q. Now, let's see, Mr. Wilson. In the first case I am reading from the trial was had some time in May, 1907, and the second case in which you gave similar testimony was in the following—

A. Yes, sir.

Q. And you testified to these agreements in 1907. Is that correct?      A. Yes, sir.

Q. And that was then three or four years after you had made your application and had made whatever arrangements you had with Mr. Dwyer?

A. I don't know just how long it was. It was

(Testimony of Guy L. Wilson.)

some time, of course, afterwards, but I don't know just how long.

Q. I say that was in 1907, and you made your entry in 1904. That is correct, isn't it?

A. I think so.

Q. What has at this moment brought to your mind the fact that you [374—44] may have made a mistake in your testimony three years ago?

A. As I say, that first conversation I testified to at those trials, I think there was a chance there that I did make some mistake about going to his house. The testimony I gave you this morning was the way I intended to testify.

Q. The only part of your testimony, as I understand, that is at variance here to-day with what you gave before is with reference to your going to his house? A. Yes, sir.

Q. Is that all? A. That is all.

Q. Well, do I understand that you testified before that he came to your house the first time?

A. I don't know. I think I testified that I met him on the street.

Q. Is that the only particular that you wish to change?

A. And that at that time I testified that he offered me a hundred and fifty dollars. Now, as near as I can remember now, he told me that I could clear that much when the land was sold.

Q. Now, Mr. Wilson, you had all of this discussion with Mr. Dwyer about whether or not, in making the sworn statement or the first filing paper, that



(Testimony of Guy L. Wilson.)

you would have to swear that you hadn't any agreement, directly or indirectly; you had that conversation with him before you filed that paper, as I understand?     A. Yes, sir.

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—Q. And if you didn't have any agreement or conversation or arrangement about selling the land to him, what was the necessity of your discussing whether or not you had any agreement?

Mr. TANNAHILL.—We object to that as cross-examination of his own witness, and leading and suggestive, and irrelevant and immaterial.

A. I don't know as there would have been any.

[375—45]

Mr. GORDON.—Q. If you haven't any agreement with a man you don't have to stretch your conscience to say that you haven't one, do you?     A. No, sir.

Q. Wasn't the conversation that you first had with Mr. Dwyer such as to raise the question in your mind as to whether or not you could conscientiously swear that you didn't have an agreement with him, and that was the reason you discussed this question with him before you filed your sworn statement?

Mr. TANNAHILL.—The same objection.

A. I don't remember now, Mr. Gordon, just exactly why I talked it over.

Mr. GORDON.—Q. You remember having those conversations with him and the discussion as to what you should swear to when you filed your sworn statement?

(Testimony of Guy L. Wilson.)

A. In a way I do; I remember something about it.

Q. Mr. Wilson, after you made your final proof, or at the time you made your final proof, you got a receipt for that money, and a certificate from the register of the land office, to the effect that patent would be delivered to you upon the receipt of that paper?

A. Yes, sir.

Q. And they are the two papers that I showed you this morning. What did you do with those papers the day you made your proof and made the deed referred to?

A. The final proof papers, I gave them to Mr. Dwyer.

Q. You don't mean the final proof papers. You mean the receipts they gave you at the land office. Is that correct?

A. Well, all the papers; after I made the deed I turned over all the papers to him that I had.

The SPECIAL EXAMINER.—Mr. Gordon wants you to answer as to the papers you got from the officers of the land office.

WITNESS.—I understand, but I don't remember anything but the final proof papers when I paid for the land. There was a receipt for it, [376—46] and I gave that to Mr. Dwyer.

Mr. GORDON.—Q. Did you ever see that paper again until it was shown to you on this trial?

A. Yes, sir.

Q. Where did you see it?

A. Mr. Dwyer came to my house one time and gave it to me.

(Testimony of Guy L. Wilson.)

Q. What did he say when he gave you that paper?

Mr. TANNAHILL.—We object to the question as irrelevant and immaterial.

A. Well, he gave me the receipt and told me I had better keep it, that there were inspectors around and I might need it.

Q. Was that all that he said?

A. I am not sure; I think that is all he said.

Q. Can you remember anything else he said? If you can, what? Was anything said about you saying that you owned the land?

A. Yes, sir, I think so.

Q. Well, what was that?

A. He told me if they wanted to know, to tell them I owned the land, had it yet.

Q. What else were you to tell them?

Mr. TANNAHILL.—We desire our same objection to go to all of this line of testimony.

A. He said if they wanted to know to tell them I had my claim yet and ask them if they wanted to buy it.

Mr. GORDON.—Q. Mr. Wilson, I think you said awhile ago that you didn't remember who told you to go to Mr. Smith's office to have your filing papers prepared. A. No, sir, I can't recall.

Q. Do you remember whether you took the description there to him?

A. No, sir, I didn't take it there.

Q. And whether or not you gave him the name of the witnesses for final proof? [377—47]

A. No, sir.



(Testimony of Guy L. Wilson.)

Q. Did you ever get a description of that land? Did anybody ever give you a description of that land?

A. I think I had a description of the land when I was in line.

Q. That was the paper though that you got from Mr.—

A. No, I think I had a description of the land some time or other; I think when I was in line I knew what the numbers of the land were.

Q. But you had your filing paper when you were in line, didn't you?

A. No, I hadn't it yet when I was in line. That was before it was open for filing.

Q. Do you know where you got that description?

A. I think I got it from Mr. Dwyer.

Q. But you didn't give that to Mr. Smith?

A. No, sir.

Q. Or didn't send it to him?      A. No, sir.

Q. Did you know of any market for timber claims at the time that you filed on this land?

A. I don't know as I did.

Q. Did you know of anybody who was buying timber claims?

A. No, sir, I never thought anything about it.

Mr. GORDON.—That is all.

A recess was thereupon taken until two o'clock P. M., at which time the hearing was resumed, with Mr. GUY L. WILSON on the witness-stand.

Mr. GORDON.—Q. Mr. Wilson, you spoke of your father-in-law this morning. I forget whether I asked you what his name was.

(Testimony of Guy L. Wilson.)

A. David Justice.

Q. And he is deceased, is he?      A. Yes, sir.

Q. Do you remember when he died, about, what year?

A. It was five years ago last February. [378—48]

Q. Did he take up a timber claim at the same time?

A. No, sir.

Q. Had he taken one up before that time?

A. Not that I know of.

Q. Do you know whether he ever took up a timber claim?      A. No, I don't think so.

Q. Was Fred Justice a son of David Justice?

A. Yes, sir.

Q. And he is also deceased?      A. Yes, sir.

Q. When did he die?

A. Five years ago last April.

Q. You said that when you went into the timber you saw a man there by the name of Bliss?

A. Yes, sir.

Q. He had nothing to do with locating you, did he?

A. Not that I know of.

Q. And the only locating you got was from Mr. Dwyer?      A. Yes, sir.

Q. The land office and Mr. I. N. Smith's office were in the same building at that time as the Lewiston National Bank, were they not?      A. Yes, sir.

Q. And the Lewiston National Bank was on the first floor of the building and these other officers were on the second floor, above it?      A. Yes, sir.

Q. I don't remember whether you said it was four or five months after you viewed the timber that you

(Testimony of Guy L. Wilson.)

made your filing. Do you remember what time of the year it was that you went into the timber?

A. It was in the fall; I don't know just what month.

Q. You don't remember the month? A. No, sir.

Q. You said that Mr. Dwyer gave you the \$14.00 to pay Mr. Case. Do you remember whether that was a check? [379—49]

A. Yes, sir, that was a check.

Q. Do you remember whose check it was?

A. I am not positive, but I think it was Mr. Dwyer's check.

Q. Where did you have it cashed?

A. At the Lewiston National Bank.

Q. You are not positive that it was Mr. Dwyer's check, are you? A. No, sir.

Q. The day that you made proof did your wife come from over in Clarkston with you that morning?

A. Yes, sir.

Q. And remained with you all that day?

A. Until after I went to work that day.

Q. And she went with you when the deed was executed? A. Yes, sir.

Q. And she executed it at the same time?

A. Yes, sir.

Q. Was the deed prepared when you arrived at Mr. Kettenbach's office? A. I don't think so.

Q. You waited there until it was prepared?

A. I think I did.

Q. Did Mr. Dwyer go with you to Mr. Kettenbach's office?



(Testimony of Guy L. Wilson.)

A. I am not sure whether he went with me or whether he was there when I got there.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Wilson, Mr. David Justice, your father-in-law, went with you up to the timber, did he not?

A. Yes, sir.

Q. Now, was he living at the time you made your final proof? A. Yes, sir.

Q. How long after that was it that he died?

A. I think it was the following winter? [380—50]

Q. Was he over at Lewiston about the time you made your final proof? A. Yes, sir.

Q. He was over that day, was he not?

A. Yes, sir.

Q. Do you remember, Mr. Wilson, that you told him you thought you would rather sell your claim and pay off that note than to carry it, about the time you made your final proof?

A. I don't recollect saying that; no.

Q. You had some talk with him regarding it, did you not?

A. I expect we talked it over, but I don't—

Q. Do you remember him going to Mr. Dwyer on that day and telling Mr. Dwyer that you thought you would rather let your claim go than let the note run and pay interest on it, or words to that effect?

A. I don't remember.

Q. You wasn't present at the time they were talking? A. No, sir.

Mr. GORDON.—What was that?

(Testimony of Guy L. Wilson.)

Mr. TANNAHILL.—I was asking him if he was present at such a conversation. I didn't know whether he was present or not.

Mr. GORDON.—I would have objected to it if I had thought you were referring to Mr. David Justice.

Mr. TANNAHILL.—I was asking him if he was present at that time.

Q. Mr. Gordon asked you concerning your testimony at former trials, one, United States against Dwyer, at Moscow, and one, United States against Kester, Kettenbach and Dwyer, held at Moscow. Now you also testified in the case of United States against Kester, Kettenbach and Dwyer, at Boise, did you not? A. Yes, sir.

Q. The consolidated cases? A. Yes, sir.

Q. And you testified there in substance the same as you testified here on examination by Mr. Gordon, with the exception of his reference [381—51] to those records and your evidence in those former trials, as you remember, did you not? A. Yes, sir.

Q. And your evidence that you gave at Boise was true, was it not? A. Yes, sir.

Q. Do you remember testifying at Boise in substance as follows (page 203): "And where did you get the money with which to pay for this land? Answer. I borrowed it from Mr. Dwyer. Question. Did he come to you, or did you go to him? Answer. I went to him. Question. Where did you go to see him? Answer. In Mr. Smith's office. Question. That was just opposite the land office? Answer.

(Testimony of Guy L. Wilson.)

Yes, sir. Question. And how much did you get from him? Answer. I can't say exactly;—I don't remember about the sum. Question. Now, did you give him any note or other security for that money at that time? Answer. Yes, sir. Question. At the time you got the money? Answer. To prove up on? Question. Yes. Answer. Yes, sir, I gave a note." You remember of so testifying at Boise, do you, Mr. Wilson? A. Yes, sir.

Q. And that evidence was true, was it?

A. To the best of my recollection.

Q. To the best of your recollection?

A. Yes, sir.

Q. And you also testified at Boise, page 204: "Now, on that occasion was there anything said between you and Mr. Dwyer with reference to a location fee? Answer. Why, I paid him for locating me, I believe. Question. Now, where did you get the money with which to pay him? Answer. At the same time I got the other money. Question. In other words, he gave you the money and you paid him part back for the location fee? Answer. Yes, sir. Question. And how much did you pay him for the location fee? Answer. \$100.00." You also testified at Boise to that effect, did you? A. Yes, sir.

Q. And that was true?

A. To the best of my knowledge. [382—52]

Q. You understood that Mr. Dwyer was borrowing the money for you from someone else, did you not?

A. Well, I knew he was going to get the money; I didn't know how he was going to get it, or where.



(Testimony of Guy L. Wilson.)

Q. You didn't know who he was going to get it from?     A. No, sir.

Q. You also understood that he would borrow enough money for you, get enough money to pay for the land and the expenses and the location fee, did you not?

A. Well, I am not sure; I knew he was borrowing the money, but I don't know whether the location fee was in that or not.

Q. Well, he did bring the money to you did he not, Mr. Wilson?     A. Yes, sir.

Q. And you gave him back \$100.00 for the location fee?     A. Yes, sir.

Q. And you gave him a note for the money?

A. Yes, sir.

Q. And I believe you said, Mr. Wilson, that you first went to Mr. Dwyer and asked him concerning his locating you on a timber claim?     A. Yes, sir.

Q. Now, you knew that Mr. Dwyer was in the location business, did you not?     A. Yes, sir.

Q. And had been engaged in locating people on land for some time?     A. Yes, sir.

Q. And you knew something about the customs of locators from what you had heard and what you had seen, did you not?     A. I knew a little about it, yes.

Q. And you knew that it was customary for locators to charge a location fee?     A. Yes, sir.

Q. Did you not?     A. Yes, sir. [383—53]

Q. And when you went to see Mr. Dwyer on that occasion you asked him if he could locate you on a piece of land, or words in substance and to that effect,

(Testimony of Guy L. Wilson.)

did you not?      A. Something like that, yes.

Q. And he told you he thought he could?

A. I don't remember the exact conversation.

Q. It is in substance to that effect?      A. Yes, sir.

Q. And then you asked him if he could get the money for you to make proof, or words to that effect, did you not?

A. Well, I understood from my father-in-law that he could locate me on a claim and get the money.

Q. And get the money?      A. Yes, sir.

Q. And that was the substance of the conversation that you had with him at that time?

A. Well, that is all I can remember of it.

Q. Now, at Boise you testified in substance as follows (page 197): "Question. Now, if you can remember anything more that was said at this first meeting with Mr. Dwyer, other than you have related here— Answer. I don't believe that I can remember anything else." That isn't the first of it. I am simply asking you this to refresh your recollection, Mr. Wilson, is all. It is on page 195: "Now, what was said at this meeting with you and Mr. Dwyer? Answer. I went up to see Mr. Dwyer, to see if I could,—if he would locate me on a claim. Question. Well, now, state all that transpired. Answer. And to see if I could borrow the money. That is as near as I can remember what I went there for." Do you remember of so testifying at Boise?

A. Yes, sir.

Q. And that is true, to the best of your recollection?      A. Yes, sir.

(Testimony of Guy L. Wilson.)

Q. "Well, what did Mr. Dwyer say? Answer. He told me he thought that he could get the money for me, and told me that I would have to pay [384—54] him for locating me. Question. Was that all that was said at that conversation, at that meeting? Answer. Well, I don't remember of anything more right now." You remember of so testifying, do you?

A. Yes, sir.

Q. And that statement was true?

A. Yes, sir.

Q. On page 197: "Now, please state what the arrangements were." I will ask you if you remember testifying at the trial at Boise in substance as follows: "Now, please state what the arrangements were. Answer. Well, at the time that I went to Mr. Dwyer's house I talked the matter over with him, as near as I can remember, what this claim was worth, and what probably it would be worth when I sold it. Question. And how did he express himself in reply to that query? Answer. Well, he told me at that time that that claim at the present price, or something to that effect, and that when I sold that it probably would be worth about \$150.00 more to me than what the expenses and cost of it would be." Do you remember of so testifying at Boise?

A. Yes, sir.

Q. And that evidence is true? A. Yes, sir.

Q. "How long after that conversation did you go to view the timber? Answer. Possibly two or three weeks. Mr. Gordon: Excuse me,—I did make a



(Testimony of Guy L. Wilson.)

mistake when I said the next day."

Mr. GORDON.—I object to this line of testimony on the ground that it isn't proper cross-examination.

Mr. TANNAHILL.—Q. "And who arranged the party for you to go with? Answer. Well, I understood that my father-in-law and mother-in-law were going with Mr. Dwyer, and, of course, I knew if I wanted a claim I could go up at that time."

Mr. GORDON.—May I ask counsel what the purpose of this is? Is it to lay the foundation for impeaching him?

Mr. TANNAHILL.—Oh, no. It will appear in the next question in [385—55] relation to paying the expenses up there. I was going to leave this now and ask him with regard to his trip up to the timber.

Q. You remember that evidence, do you, Mr. Wilson? A. Yes, sir.

Q. And that statement is substantially correct?

A. Yes, sir.

Q. Mr. Justice went with you up to the timber, did he? A. Yes, sir.

Q. Do you know whether Mr. Justice paid any of these expenses up there or not? A. I don't know.

Q. He might have paid your car fare?

A. He might have, coming back, but I don't know whether he did or not.

Q. And the arrangement was that Mr. Dwyer was to have horses there at Orofino for you to go out to the timber with? A. Yes, sir.

Q. And he had the horses there? A. Yes, sir.

(Testimony of Guy L. Wilson.)

Q. But Mr. Dwyer wasn't with you coming back?

A. No, sir.

Q. And you didn't see him pay any hotel bills or pay any fare coming back, did you?      A. No, sir.

Q. And you don't know who paid the expenses?

A. No, sir, I don't know.

Q. Now, you had no agreement with Mr. Dwyer or anyone else to sell him this land before you made your filing, did you?

A. Not only that I understood that if I sold it, or when I went up to his house that if I went up there and taken a claim that after it was sold I could clear about \$150.00.

Q. But you had no specific agreement to sell it to Mr. Dwyer, or anyone else, did you?

A. I didn't have to sell it to him, no. [386—56]

Q. And you had no agreement with Kester or Kettenbach regarding it, did you?      A. No, sir.

Q. Now, concerning your evidence, which Mr. Gordon introduced awhile ago and asked you about, which was given in the former trials, I will ask you, Mr. Wilson, if you had talked with Mr. Gordon regarding that evidence and told him that some parts of that evidence was not correct, before you went on the stand?      A. Just that one statement was all.

Q. And your evidence as you have given it here is substantially correct, as you remember it?

A. The best I can remember.

Q. As you have given it on cross-examination?

A. Yes, sir.

Q. And, regardless of what might have inadver-

(Testimony of Guy L. Wilson.)

tently crept in or fallen in in those other trials or that other evidence, regardless of what might have been said during that time or those conversations, the evidence that you have given here on cross-examination is substantially correct, to the best of your recollection, is it?     A. I think it is.

Q. Now, Fred Justice was your brother-in-law, was he?     A. Yes, sir.

Q. I will ask you if Fred Justice was not standing in line up there at the time—that is, if he was not interested in getting the filing papers for people, and arranging the line and keeping people in line, so that they could get a filing?

A. It seems as though he had charge of the line, but I don't know anything further than that.

Q. He seemed to have charge of the line?

A. Yes, sir, that is all I know.

Q. As a matter of fact, Mr. Wilson, you know that it is customary for a locator to see that people that he locates get a filing on the particular land that he locates them upon, do you not?     [387—57]

A. Yes, sir.

Q. And it is customary for a locator to see that the papers are properly made out and to see that there is no conflict in the people, the particular people that he locates, do you not?     A. Yes, sir.

Q. And that is what Mr. Dwyer did in this particular case, in so far as you know?

A. Well, I don't know.

Q. Well, he did see that all of you got your papers properly made out and that all of you got your filings?



(Testimony of Guy L. Wilson.)

A. My papers were made out; I don't know who had them made out.

Q. You don't know whether Mr. Dwyer or Mr. Fred Justice had them made out, do you?

A. I don't know who had them made out.

Q. Now, I believe you said in your direct examination that according to your best recollection you and Mr. Dwyer figured up about what the value of the claim was and about what it would be worth, or what you would get out of it after it was sold, over and above expenses. That is substantially correct, is it?

A. Well, I don't remember figuring any. All I remember of that conversation was that that would be about what it would be worth to me when I took it up.

Mr. TANNAHILL.—That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. Just one question, with reference to the response to the question of Mr. Tannahill as to whether or not you told me that some parts of your former testimony were incorrect. That was the part you explained on the stand this morning, was it not?

A. Yes, sir.

Mr. GORDON.—That is all. [388—58]

**[Testimony of Mrs. Ella Wilson, for Complainant.]**

Mrs. ELLA WILSON, a witness called in behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Ella Wilson, are you?

A. Yes, sir.

Q. And you are the wife of Mr. Guy D. Wilson, who has just left the witness-stand, are you not?

A. Yes, sir.

Q. You are also a daughter of Mrs. Frances Justice? A. Yes, sir.

Q. Mrs. Wilson, do you remember, some time after your husband filed on a timber claim, of Mr. Dwyer and his wife coming to your house at Clarkston?

A. Yes, sir.

Q. And do you remember what they said when they came there, and what their mission was?

A. I don't remember very distinctly now. It was something about questions that would be asked at the land office.

Q. That were to be asked who at the land office?

A. Mr. Wilson.

Mr. TANNAHILL.—We object and move to strike out the question and answer of the witness, on the ground that it is incompetent, irrelevant and immaterial, it being a circumstance that happened after the filing of the sworn statement and immediately prior to the making of the final proof, and it is immaterial in so far as it relates to any of these cases

(Testimony of Mrs. Ella Wilson.)

or any of the defendants named in any of these actions.

Mr. GORDON.—Q. Was your husband home at the time that Mr. and Mrs. Dwyer arrived?

A. No, sir.

Mr. TANNAHILL.—It will be understood that this same objection goes to all of this same line of testimony. [389—59]

The SPECIAL EXAMINER.—Yes, let it be so understood, that the same objection applies to the line of questions objected to.

Mr. GORDON.—Q. You say that the question was discussed as to certain questions that Mr. Wilson was to answer at the land office, is that correct?

A. I believe so.

Q. Do you remember what those questions were?

A. I can't remember now what they were.

Q. Do you remember whether or not it was with reference to what Mr. Wilson should say at the land office as to where he got the money with which to purchase the land?

A. I couldn't say as to that. I don't believe that question was discussed. I can't tell.

Q. Do you remember of anything that was said about what answer he should make when he was asked whether or not he had an agreement?

A. No, sir.

Q. Mrs. Wilson, do you remember testifying at the trial of United States vs. William Dwyer, one of the defendants in this case, at Moscow? A. Yes, sir.

Q. And do you remember also testifying at the



(Testimony of Mrs. Ella Wilson.)

case of United States vs. William F. Kettenbach, George H. Kester and William Dwyer, later, at Moscow, in the fall of 1907?

A. I only testified up there once.

Q. That was the case against Mr. Dwyer?

A. I don't know which one it was; I don't remember.

Q. Do you remember whether those questions were asked you at that time or not?

A. They might have been; I expect they were.

Q. Haven't you any recollection of it now?

A. I expect the questions were asked me then; I don't remember what I answered though.

Q. And, of course, you told the truth at that time?

A. Certainly. [390—60]

Q. Now, for the purpose of refreshing your memory, Mrs. Wilson, I will read from page 266 of the trial of United States vs. Kester, Kettenbach and Dwyer, No. 1605, Volume 1.

Mr. TANNAHILL.—We desire to interpose an objection to counsel attempting to refresh the witness' recollection in this manner, on the ground that it is improper and irrelevant and immaterial.

Mr. GORDON.—Q. Do you remember this question being asked you: "Question. Do you recall an instance of Mr. Dwyer and Mrs. Dwyer, or either or both of them, coming to the house where you then lived, to see Mr. Wilson, your husband?" And you made this answer: "Yes, sir." "Question. About what time of day was this? Answer. About six o'clock in the evening. Question. Was your hus-

(Testimony of Mrs. Ella Wilson.)

band there at the time that they arrived? Answer. No, sir. Question. How long after they came did your husband come? Answer. About fifteen minutes." Do you remember those questions being asked and those answers made by you on the occasion of your being at Moscow testifying at the trial of Mr. Dwyer? A. Yes, sir.

Mr. TANNAHILL.—The same objection.

Mr. GORDON.—Q. Was this further question asked you: "What inquiry, if any, did Mr. Dwyer make when he came to the house? Answer. He wanted to know if Mr. Wilson was at home; he wanted to see him." Do you remember that question being asked and that answer made by you?

Mr. TANNAHILL.—The same objection, if the Court please.

A. Yes,

Mr. GORDON.—Q. Do you remember this question being asked you on that occasion: "Did you hear any conversation between your husband and Mr. Dwyer after your husband came?" And you made this reply: "Yes, sir"?

A. Yes, sir.

Q. "Did you hear the entire conversation? Answer. Yes, sir."

Mr. TANNAHILL.—It is understood that we have the same objection to all this line of testimony.  
[391—61]

The SPECIAL EXAMINER.—It will be so understood.

Mr. GORDON.—Q. What did that conversation relate to?

(Testimony of Mrs. Ella Wilson.)

A. About the questions Mr. Wilson had to answer at the land office.

Q. "State what Mr. Dwyer and your husband said, either one or both of them, in the conversation. In other words, relate the conversation as you heard it, Mrs. Wilson. Answer. Mr. Dwyer said that he wanted to give Mr. Wilson some pointers on the questions he had to answer, and he said to tell them that he had the money, or its equivalent, to pay for his claim, and Mr. Wilson asked if he had to perjure himself when he answered the question, and Mr. Dwyer said not to worry about that, it was a thing which was done every day." Do you remember those questions being asked you and those answers being made by you on that occasion?

A. Yes, sir.

Q. Now, do you remember on the occasion of Mr. Dwyer and his wife being there that we have been speaking of, whether there was anything said about an agreement between Mr. Dwyer and Mr. Wilson?

A. No, sir, there was nothing said about any agreement.

Q. Was there anything said about there not being an agreement? A. No, sir.

Q. You are sure of that?

A. I am almost positive of it; I don't remember of any such thing being said.

Q. Going back to your testimony at the trial at Moscow which we have referred to, I will ask you if this question was asked you: "Do you recall anything else that he (relating to Dwyer) said relative



(Testimony of Mrs. Ella Wilson.)

to the matters between him and Mr. Wilson, your husband? Answer. He said that the agreement between them was only verbal, but that he would get the money just the same." Do you remember that?

A. I do, now that you have read it.

Q. Was this question asked you: "That who would get the money? Answer. Mr. Wilson. Question. Do you know what money he referred [392—62] to? Answer. Why, the money for the claim. Question. Did you know what money he referred to? Answer. Yes, sir. Question. What money did he refer to? Answer. The money he was to get for his timber claim, for the right. Question. For his right? Answer. Yes, sir." Do you remember those questions being asked you and those answers being made by you on the occasion I refer to? A. I do, now that you refresh my memory.

Q. And you remember those matters now, do you, as having transpired at the time Mr. Dwyer called at your house, before Mr. Wilson made his final proof? A. Yes, sir.

Q. I say, you recall that now, do you?

A. Yes, sir.

Q. Mrs. Wilson, I think you are mistaken about having only testified at one of those trials. Don't you remember being up there for two trials?

A. I don't know; maybe I was. I have been at most of them; I expect I was there.

Q. Page 279. Now, I shall read from the testimony of Ella Wilson, the present witness in this case, given in the case of United States vs. Dwyer,

(Testimony of Mrs. Ella Wilson.)

at Moscow, at the May term, 1907, and being numbered in the stipulation made yesterday between the parties as No. 1606.

Mr. TANNAHLL.—We object to counsel reading from the evidence of the witness given in the case referred to, on the ground that it is not a matter of refreshing the witness' recollection, but it is an effort to get in evidence something that transpired or happened or took place at another trial, and he is attempting to contradict his own witness.

Mr. GORDON.—I desire to state on the record that the purpose is to refresh, if possible, the witness' recollection as to certain matters which she has said that her memory is faulty in.

Q. On the occasion that I have just referred to, Mrs. Wilson, do you remember this question being asked you? “Well, now, state the conversation as near as you remember it that was had there between your [393—63] husband and Mr. Dwyer. You can talk to the jury over there if you will please, Mrs. Wilson. Answer. Well, Mr. Dwyer told Mr. Wilson that he wanted to give him a few pointers on questions that he would have to answer. Question. State what questions you remember in particular, if any. Answer. Well, he said that to answer the questions where he got the money that he had saved it, he had the money or its equivalent, he had our place, and that he had saved the money for two years or more, and Mr. Wilson asked him if he would have to perjure himself in answering any of these questions, and he said no, there was nothing in them,

(Testimony of Mrs. Ella Wilson.)

it was something that was being done every day, and that this agreement between himself and Mr. Wilson was just verbal and did not amount to anything, but he would get the money just the same."

Mr. TANNAHILL.—We object to it as incompetent, irrelevant and immaterial, and repetition.

Mr. GORDON.—Q. You remember those questions being asked and the answers made by you?

A. Yes, sir.

Q. Now, do you remember the day on which your husband made final proof, Mrs. Wilson, at the land office? A. No, I don't remember.

Q. I don't mean do you remember the day of the week, but do you remember the occasion?

A. Oh, yes, I remember the occasion.

Q. State whether or not you came from over in Clarkston with him in the morning of that day.

A. Yes, sir.

Q. And did you remain with him pretty much all day until he went back to work in the afternoon?

A. Yes, sir.

Q. Did you go to the land office with him?

A. Yes, sir.

Q. And you stayed with him all the time until he went back to his work, after you had your dinner and had been to make the deed? [394—64]

A. Most of the time.

Q. You say most of the time. Was there any of the time you wasn't?

A. I was near, I guess; I don't know as I was always in the same room.



(Testimony of Mrs. Ella Wilson.)

Q. You came over with him to see the transaction through, did you?    A. Yes, sir.

Q. Were you with him when he gave the note to Mr. Dwyer for the final proof money?    A. No, sir.

Q. Did you say no, or you don't know?

A. I said no, sir.

Q. Where were you then?

A. I must have been around some place; I don't know just where I was, but I didn't see that.

Q. Well, you were with Mr. Wilson when he made his proof and paid his money into the land office?

A. I don't remember whether I was in the room or not.

Q. Do you remember of going anywhere else but with Mr. Wilson that day?

A. I think I went to the office where he made out a paper of some kind.

Q. That was with Mr. Wilson though, wasn't it?

A. Yes, sir.

Q. If you don't remember these things, Mrs. Wilson, just say so. I am not trying to catch you at all. I just want to learn these transactions as they actually happened. Did you go to this office where they made the papers before lunch or after lunch?

A. I don't remember that.

Q. Do you know whose office it was you went to to make the papers?    A. No, I don't.

Q. Was it Mr. Otto Kettenbach's office?

A. Yes, I think it was. [395—65]

Q. Was that the occasion of your signing the deed?

A. Yes, sir.

(Testimony of Mrs. Ella Wilson.)

Q. Now, do you remember going to the Lewiston National Bank after you signed that deed?

A. Yes, sir.

Q. What did you go there for?

A. Mr. Wilson's note.

Q. Mr. Wilson's note?      A. Yes, sir.

Q. And that was the note that he had given in the morning, was it?

A. I don't know when he gave the note.

Q. Did you ever know of him having any other note?      A. I don't know.

Q. Well, now, what note did you go there to get?

A. It was just the note he had at the bank; I don't know who it was made out to, or anything.

Q. And did you take any money there to pay that note?      A. No, sir.

Q. Did you have a note of instruction to present to the bank, or did you just go there and ask for the note?      A. I just asked for the note.

Q. Who did you know at that bank at that time?

A. I don't know as I was personally acquainted with any of them.

Q. Did you have a speaking acquaintance with any of them?      A. Yes, I knew Mr. Kester.

Q. Mr. George Kester?      A. Yes, sir.

Q. And did you see him when you went there to get that note?

A. I don't remember whether he was there or not.

Q. Do you know who you saw about the note at the bank?      A. No, sir.

Q. And do you remember what you said when you

(Testimony of Mrs. Ella Wilson.)

went in there?

A. I asked for Mr. Wilson's note. [396—66]

Q. Mr. Guy Wilson's note, or just Mr. Wilson's note?

A. I don't know which I said, but I asked for Mr. Wilson's note anyway.

Q. And whoever you asked gave you the note, did they? A. Yes, sir.

Q. And you didn't have to pay any money to get it? A. I didn't.

Q. You got the note simply by going there and asking for it? A. Yes, sir.

Q. You say you don't know whether you saw Mr. George Kester on that occasion or not?

A. No, sir.

Q. Your mind is a blank in that respect? You have no idea whether you saw him or not?

Mr. TANNAHILL.—We object to it as leading and suggestive and argumentative, and an improper way to examine a witness.

Mr. GORDON.—I had no intention of being offensive about it.

Q. Do you remember seeing Mr. George Kester when you went to the bank that day?

A. I don't remember who was in the bank.

Q. Would you say you didn't see him?

A. I wouldn't say that I did or didn't; I don't remember whether he was there or not.

Q. You have no recollection of who you saw there that day? A. No, sir.

Q. Did you know anybody else in the bank except



(Testimony of Mrs. Ella Wilson.)

Mr. Kester, even to speak to?      A. No, sir.

Q. How long after you signed the deed did you go to the bank to get the note?

A. I don't know how long it was; it was in the afternoon.

Q. Well, haven't you any idea how long it was?

A. It might have been two or three hours; I couldn't say. [397—67]

Q. Do you know whether you went directly from Mr. Otto Kettenbach's office to the bank or not?

A. I expect I had my lunch first; I don't remember just where I went.

Q. And did you get your lunch before you went to Mr. Kettenbach's office or after?

A. I don't remember.

Q. What did you do with the note after you got it?

A. Took it home and burned it up.

Q. The same day that you received it?

A. I suppose so.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mrs. Wilson, you and your husband went over to see Mr. Dwyer about locating your husband on a claim, did you not?      A. Yes, sir.

Q. You was with Mr. Wilson at that time?

A. Yes, sir.

Q. And you heard Mr. Wilson ask Mr. Dwyer if he could locate him on a timber claim, did you?

A. Yes, sir.

Mr. GORDON.—Objected to on the ground that it is not proper cross-examination and is a matter not

(Testimony of Mrs. Ella Wilson.)

brought out on the examination in chief.

Mr. TANNAHILL.—Q. And you heard Mr. Dwyer tell him that he thought he could locate him on a timber claim? A. Yes, sir.

Q. Did you also hear Mr. Wilson ask him if he could borrow the money for him to pay for the claim and pay his expenses? Did you hear Mr. Wilson ask Mr. Dwyer if he could borrow the money for him to pay or the claim? [398—68] A. Yes, sir.

Q. Did you also hear Mr. Wilson ask Mr. Dwyer about what the claim was worth? A. Yes, sir.

Q. And did you notice, did you see Mr. Dwyer figure up about what the expenses would be? Do you remember seeing Mr. Dwyer, with Mr. Wilson, your husband, figure up about what the expenses would be, and then Mr. Dwyer gave Mr. Wilson about the value of that claim at that time, or when he could sell it?

A. Yes, sir.

Mr. GORDON.—I presume my objection can still run to this line of cross-examination.

The SPECIAL EXAMINER.—Yes.

Mr. TANNAHILL.—Q. Did you hear Mr. Dwyer tell Mr. Wilson that there ought to be \$150.00 in it for the claim, that it ought to net him \$150.00 when the claim was sold? A. Yes, sir.

Q. Over and above expenses? A. Yes, sir.

Q. Now, Mrs. Wilson, this is the only agreement that you know of being made between Mr. Dwyer and Mr. Wilson, is it not? A. Yes, sir.

Q. And that was the agreement which you referred

(Testimony of Mrs. Ella Wilson.)

to in your examination and in your evidence in the two trials at Moscow, which was read by Mr. Gordon in the record, and of which you were asked in your direct examination?      A. Yes, sir.

Q. And the substance of that agreement was, according to your best recollection of it, and according to your best understanding of it, was that Mr. Dwyer was to locate Mr. Wilson on a timber claim, and Mr. Wilson was to pay him a location fee, and Mr. Dwyer was to help him get the money or borrow the money for him for the land and pay the expenses? [399—69]      A. Yes, sir.

Mr. TANNAHILL.—That is all.

Redirect Examination.

(By Mr. GORDON.)

Q. Mrs. Wilson, I understood you to say that you went with Mr. Wilson to see Mr. Dwyer about taking up a timber claim?      A. Yes, sir.

Q. What was said at that conversation?

A. Mr. Wilson asked Mr. Dwyer if he could get a claim for him, and asked what the claim would be worth and what the expenses would be, just the same conversation that Mr. Tannahill was asking me about.

Q. I know, but I want you to tell what it was.

A. He asked him if he could get the money for him, borrow the money some place for him, if he knew of a place where he could get the money; and Mr. Dwyer told him he wanted a location fee, and they figured the expenses and about what the claim would be worth after all expenses were paid.



(Testimony of Mrs. Ella Wilson.)

Q. You say that the only agreement that you know about, and the one that you referred to in your testimony at Moscow, and the one that Mr. Dwyer referred to in his conversation with Mr. Wilson just prior to making final proof was that agreement that you have just related. Is that correct?

A. Yes, sir.

Mr. GORDON.—That is all.

Mr. TANNAHILL.—That is all. [400—70]

**[Testimony of Fred W. Shaeffer, for Complainant.]**

FRED W. SHAEFFER, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Fred. W. Shaeffer?

A. Yes, sir.

The SPECIAL EXAMINER.—Speak loud enough so that we can hear, Mr. Shaeffer.

WITNESS.—Well, that's my name.

Q. How do you spell it? A. S-h-a-e-f-f-e-r.

Mr. GORDON.—Where do you reside, Mr. Shaeffer? A. Here, in Lewiston.

Q. How long have you resided in Lewiston?

A. I think about nine years; somewhere along in there.

Q. What was your occupation in May, 1902?

A. I guess that was the spring that I was working for the Lewiston National Bank.

Q. In what capacity were you employed at the Lewiston National Bank?

(Testimony of Fred W. Shaeffer.)

A. Well, I was janitor of the building.

Q. And at that time were you acquainted with Mr. George H. Kester?      A. Yes, sir.

Q. One of the defendants in this suit?

A. Yes, sir.

Q. And Mr. William F. Kettenbach?

A. Yes, sir.

Q. And Mr. William Dwyer?

A. Yes, sir. [401—71]

Q. How long had you known Mr. Kester before you went into the bank?

A. I didn't know him at all; I had just seen him, was all. I wasn't acquainted with him at all only by sight.

Q. Do you remember what year you went into the bank, or how long before you made a timber and stone filing?

A. Well, I guess it must have been—I guess it was in March, 1902, I think it was, just about the same spring.

Q. The same spring that you made your timber entry?

A. I think it was. Let's see—no—probably it was the next spring; I think I went in one spring, and the next spring. It was in 1902, I think, I took up the claim, wasn't it? I guess my filing will show. I think it was that spring or that year that I took up the claim that I went there to work.

Q. Your best recollection is, as I understand you, that you took up a claim the same spring you went into the bank?

(Testimony of Fred W. Shaeffer.)

A. Yes; I think that is what the filing calls for.

Q. I show you timber and stone land sworn statement signed by Fred. W. Shaeffer, dated May 5th, 1902, and ask you if that is your signature to that paper? A. It looks like it; yes, sir.

Q. And whether you filed the same in the land office on or about the date it bears?

A. Yes, sir; that is my signature.

Q. And you filed the paper in the land office?

A. Yes, sir.

Q. I show you a notice of publication of Fred W. Shaeffer, bearing the same date, and ask you if you filed that paper at the same time? A. Yes, sir.

Q. I show you the testimony of Fred. W. Shaeffer given on final proof, dated July 25th, 1902, and ask you if that is your signature to that paper? [402—72] A. Yes, sir.

Q. Speak a little louder.

A. Yes, it looks like it.

Q. I show you the cross-examination of Fred. W. Shaeffer on final proof, and I will ask you if that is your signature?

A. Yes, sir, that is my signature.

Q. Mr. Shaeffer, will you state what induced you to take up a timber claim?

A. Well, I took up a timber claim because I thought I could make a little money out of it.

Q. Well, was that a notion of your own, or did someone suggest that to you?

A. Well, Mr. Kester asked me if I had ever taken up a timber claim, and I told him no.



(Testimony of Fred W. Shaeffer.)

Q. Now, state what was said at that time.

A. And he said I could make \$100.00 if I would take up a claim, and I told him all right. That was all that was said at that time that I remember of. He asked me if I had ever taken up a claim, and I told him I hadn't.

Q. Where was that conversation had?

A. That was right down there in the public part of the bank where the people come in, along about three o'clock, just after they had closed the door in the afternoon—out in front, you know.

Q. And did you have any conversation at any other time shortly thereafter, about taking up a timber claim?

A. Yes; a short time afterwards why Mr. Kester told me that I could arrange my work so I could go up to Kendrick the next day and I would meet Mr. Dwyer there.

Q. Now, that was Mr. George H. Kester?

A. Yes, sir.

Q. And the Mr. Dwyer you referred to is Mr. William Dwyer?

A. Yes, sir. [403—73]

Q. And what was Mr. Kester's position in the bank at that time?

A. He was cashier.

Q. Now, how long after the first conversation that you had with him that you have related was the second one?

A. It wasn't very long. I don't remember. It wasn't but a few days, according to my best recollection now.

Q. Now, was anything said at either of those talks about who was to pay for the claim?

(Testimony of Fred W. Shaeffer.)

A. No, sir. Well, when I went up he said he would let me have the money to pay expenses up there when I went to Kendrick.

Q. When you went to Kendrick? A. Yes, sir.

Q. Well, was that at the time that you had the talk with him that you have related, that he said Mr. Dwyer would be up at Kendrick? A. Yes, sir.

Q. And will you repeat again what he said to you at that time about expenses?

A. Well, that was all, that he would let me have the money to pay my expenses up there.

Q. And how long after that conversation did you go up to Kendrick?

A. Well, I went the next day. I straightened up my work and went the next morning.

Q. Did you meet anyone at Kendrick? Was Mr. Dwyer there?

A. Yes, sir, Mr. Dwyer, and I don't know—there was quite a little party,

Q. How far was the timber from Kendrick?

A. Well, it was up about—I think it was about three miles from the Grangeville postoffice—I think it is—there is a little postoffice there.

Q. And how did you go from the train to the timber? What sort of a conveyance did you have?  
[404—74]

A. Well, there was a saddle-horse there for me.

Q. And was Mr. Dwyer at the depot to meet you?

A. Yes, sir, him and some other parties; I didn't know who the other parties were.

Q. Did you have a letter from Mr. Kester to Mr.

(Testimony of Fred W. Shaeffer.)

Dwyer?      A. No, sir.

Q. Well, when you arrived at Kendrick did you state your mission to Mr. Dwyer, or did Mr. Dwyer say anything to you about it, or what happened?

A. Well, I don't remember just what was said. I went out and met him and I don't remember just what was said. Anyhow, there was a saddle-horse there for me, and we started off then.

Q. Did Mr. Dwyer take you over to the timber claim?

A. Yes, sir. We went out to his—he had a homestead right adjoining it, and we went up there and got dinner at his place about three o'clock in the afternoon, and then we walked out on to it after dinner.

Q. And did you go back to Lewiston the same day?

A. No, sir. I left my saddle-pony there. Some man had gone in a buggy with the driver from Kendrick, and I left my saddle-pony for him to go on up farther into the timber, and he drove I think to the Grangeville postoffice there—a man that runs the postoffice there—and we stayed there till morning and then drove down to Kendrick the next morning.

Q. And then returned to Lewiston?      A. Yes, sir.

Q. And did you have any talk with Mr. Kester on your return?      A. Well, I think so.

Q. Well, did you tell him that you had been up there, and that you had got located?      A. Yes, sir.



(Testimony of Fred W. Shaeffer.)

Q. Did you have a description of the land?

A. I don't remember just about that.

Q. Sir?

A. I say, I don't remember just about that.

Q. Well, did you get your expenses when you came back?     A. Yes, sir; he paid them.

Q. Now, state what happened. Did you ask Mr. Kester for it?

A. Well, he gave me money to pay for the filing and to pay for the publication.

Q. Mr. Kester did?     A. Yes, sir.

Q. And did he give you your expenses—the money that you had expended in going up on the trip?

A. Well, I had saved some little money out of my pocket up there. He didn't know what it would be when I went up there, and I don't think I turned that in at all. I think I paid that out of my own pocket, and I don't think I turned that in when I came back.

Q. Well, did he pay part of your expenses in going up there?

A. Yes, sir; he said he would pay my expenses.

Q. And you were away from the bank how many days?

A. Well, I went up one morning, and was back the next day.

Q. You were still paid your salary for the time you were off?     A. Yes, sir.

Q. Where did you have this sworn statement that you have identified—this first paper you filed in the land office—prepared?

A. Well, I don't remember about those papers. I

(Testimony of Fred W. Shaeffer.)

lost that part of it out. Indeed, I couldn't tell you. I haven't any idea how those papers were fixed. What was done about them I couldn't say. I don't remember about them.

Q. Well, do you know where you received them? Do you know who gave them to you? [406—76]

A. Indeed, I don't remember about the papers, and I wouldn't like to make any statement, because really I have just lost that part of it out about them papers, because I came in at the time and was so busy and there was so much going on that I have just lost that part of it out; I don't remember how those papers were arranged.

Q. Did you go to the land office to file them alone, or did some one go with you?

A. Well, I went on up to the land office alone.

Q. Did you meet anybody there?

A. I don't remember just what was done about the papers, but anyhow I went in there with Mr. Molloy and paid my filing.

Q. Was Mr. Dwyer at the land office when you made your filing? A. I don't think so.

Q. Was Mr. Kester there?

A. Well, I don't know; he may have been; I don't remember just about it.

Q. Do you remember whether or not Mr. Kester went with you to the land office?

A. I don't think he went with me. Anyhow I went up to the land office alone.

Q. Well, do you remember whether Mr. Kester was there at the land office?

(Testimony of Fred W. Shaeffer.)

A. I don't remember about that. I do remember I went to Joe Molloy.

Q. Joe Molloy was employed in the land office at that time, was he? A. Yes, sir.

Q. Well, where did Mr. Kester give you the money for your filing fee and for your publication?

A. It was done at the bank, in front of the window.

Q. Was that the day after you returned from viewing the land? [407—77] A. Yes, sir.

Q. Now, in several months it came time to make final proof. Do you remember the occasion of making your final proof? A. Yes, sir.

Q. Do you remember who notified you or told you when the time to make proof arrived?

A. Of course, I knew the date when the final proof should come; so I think I said to Mr. Kester that this was the day to make final proof, and so then he told me to come around in the bank after a while; so after a while I went down in the bank, around in front, after the bank was open, and—

Q. Well, what happened when you went there?

A. Well, Mr. Kester handed me out some money, and I went up and made final proof.

Q. How much money did Mr. Kester hand you?

A. There was 168 acres—I guess about \$430.00, or somewhere there.

Q. And you took that money and went to the land office and made your proof? A. Yes, sir.

Q. Did you have any conversation with Mr. Kester as to what you should say when you went to the land office to make this proof, as to where you got the money?



(Testimony of Fred W. Shaeffer.)

Mr. TANNAHILL.—We object to that as incompetent, irrelevant and immaterial, and a matter referring to things occurring subsequent to the filing of the sworn statement, and prior to the making of the final proof.

Mr. GORDON.—Answer the question, Mr. Shaeffer.

A. Well, he suggested that I should have part of that money myself—part of the filing for myself.

Q. Well, what do you mean by suggesting that you should have [408—78] part of the money yourself?

A. Well, he meant that I should have furnished part of that money myself; that is, that \$430.00?

Q. Well, do you mean that you were to actually furnish it, or that that is what you were to say when you went to the land office?

A. He says I only borrowed half of the money.

Q. But you did get it all, didn't you?

A. Yes; he throwed out all the money to me—he throwed me out \$430.00?

Q. And you went to the land office and paid this in, and you did make a statement to that effect?

A. I guess I did. That is what was in the paper, I guess. I don't hardly know what I did say in that statement, but it seems as if it is there all right.

Q. They gave you a receipt for that money and a certificate, when you paid it into the land office, did they? A. Yes, sir.

Q. And what did you do with that receipt?

A. Well, I went down stairs and around to the

(Testimony of Fred W. Shaeffer.)

bank, and he asked me what I had. "Well," I says, "I have got a receipt for it," and I showed it to him and I passed it in through the window, and he looked at it and then he gave me \$100.00.

Q. He did what?

The SPECIAL EXAMINER.—He gave him \$100.00. Who is referred to as "he," Mr. Gordon?

WITNESS.—Mr. Kester.

Mr. GORDON.—Mr. Kester.

Q. It is Mr. Kester that you gave the receipt to, and he gave you \$100.00? A. Yes, sir.

Q. And did you make a deed about that time to anybody of that land? [409—79]

A. Well, I signed a deed shortly afterwards; I don't know who it was to.

Q. Well, now, who told you to sign the deed?

A. Well, I was down there in the bank either that day or the next or a few days afterwards.

Q. I can't hear you. Speak a little louder.

A. I went down to the bank shortly afterwards, within a day or two—a few days afterwards, anyhow; I don't remember just how long—and there was a paper laying on his desk and he said it was a deed and asked me if I would sign it, and so I just signed it.

Q. You didn't get any more money when you signed it, did you? A. No, sir.

Q. You never made any other deed to this land, did you? A. No, sir.

Q. And do you remember whether you read the deed or not? A. No, sir; I didn't.

(Testimony of Fred W. Shaeffer.)

Q. You just signed it because he told you to, is that right?     A. Yes, sir.

Q. Did you ever negotiate a sale for this property; or did you just deed it as you were told to, Mr. Shaeffer?

Mr. TANNAHILL.—We object to it as leading and suggestive.

Mr. GORDON.—Answer the question.

A. Well, the deed was there, or he said something about a deed, and I signed it.

Q. And I will ask you whether or not the entire transaction turned out just exactly as you understood it was to turn out when you first talked to Mr. Kester about filing on a claim?

A. Well, I don't know what you mean by that. He said I could make \$100.00 out of it, and I got \$100.00; but I didn't know how it was to come out, or in what way I would make it.

Q. You didn't expect to make the \$100.00 by keeping the claim, [410—80] did you?

A. Well, I didn't know of anybody that ever kept those claims.

Q. How is that?

A. I say I didn't know of anybody ever keeping those claims. They all sooner or later sold them.

Q. But I am speaking at the time you sold, did you know of any people who had sold claims at that time?

A. Well, there was quite a few were buying claims, but I don't know just—well, I hadn't formed any conclusion really about it; but, of course, a person



(Testimony of Fred W. Shaeffer.)

knew at any time that they could turn those claims over to somebody.

Q. Well, who were they turning them over to at that time?

A. Well, I knew there was the Clearwater Timber Company, and there was quite a few companies that was buying claims at that time. There was several people here at that time.

Q. Did anybody offer to buy your claim?

A. No, sir; but then I knew there was somebody buying those claims at the time.

Q. If they had offered to buy your claim, would you have sold it to them?

A. Well, of course, I would have given them the first preference to the claim. I would have gone to them and said, "Here, I have got a chance to sell that claim."

Q. Why would you have given them the first preference?

A. Well, because I got the money from them to pay for it.

Q. Did you ever pay a locating fee for being located on that claim?      A. No, sir.

Q. Did you give a note in security for the money you got from Mr. Kester?

A. No, sir. [411—81]

Q. And, of course, you didn't pay any interest, for you only had it that part of a day?      A. That's all.

Q. Mr. Shaeffer, when you went to the land office to make the proof, you remember certain questions being asked you, do you?      A. Yes, sir.

(Testimony of Fred W. Shaeffer.)

Mr. TANNAHILL.—We object to that as irrelevant, immaterial and incompetent, and a matter relating to things occurring subsequent to the sworn statement.

Mr. GORDON.—Q. I read from his cross-examination that you identified here a moment ago, question No. 10, and ask you whether you remember this question being asked you: “How many thousand feet board measure of lumber did you estimate that there is on the entire tract, and what is the stumpage value of it?” Answer. “2,000 feet; \$2,000.00.” Do you remember that question being asked you?

A. I don’t remember what questions were asked there.

Q. That was the day that you turned the receipt in and got the \$100.00 from Mr. Kester?

A. Yes.

Q. Did you think the claim was worth \$2,000.00 that day?

A. I don’t remember much about that. The timber seemed to be small timber on the place.

Q. “Question 12 — ”

A. I always thought that claim was worth about \$700.00—\$600.00 or \$700.00.

Q. “Question 12. What do you expect to do with the land and the lumber on it when you get title to it?” “Answer. I intend to keep it.” Do you remember making that answer?

A. Well, I don’t remember what was in that.

Mr. TANNAHILL.—It is understood that our objection goes to all [412—82] this line of questions?

(Testimony of Fred W. Shaeffer.)

Mr. GORDON.—Yes.

The SPECIAL EXAMINER.—Yes, that may be understood, Mr. Stenographer.

Mr. GORDON.—Q. Do you know whether you made that answer?

A. I don't remember about the statements.

Q. "Question 17. Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?" "Answer. I earned about half of it; borrowed the balance; I borrowed from the Lewiston National Bank." Do you remember answering that question that way?

A. Well, of course I did have part of the money; but then he gave me the money there to pay for it; he threwed me out the whole amount.

Q. And was that answer made in accordance with the suggestions that Mr. Kester made to you?

Mr. TANNAHILL.—We object to that as leading and suggestive.

Mr. GORDON.—Q. Which Mr. Kester made to you when he gave you the four hundred and some odd dollars? A. Yes, sir.

Mr. TANNAHILL.—We object to that as leading and suggestive, and irrelevant and immaterial, and we move to strike out the answer of the witness, on the ground that it was given before I had an opportunity to make an objection.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement identified by the witness Fred. W. Shaeffer, dated May 5th, 1902, the



(Testimony of Fred W. Shaeffer.)

notice for publication, bearing the same date, the testimony of Mr. Shaeffer given at the final proof, dated July 25th, 1902, the cross-examination of Mr. Shaeffer at the same time, and the testimony [413—83] of the other witnesses on the final proof, being part of the land office files, the Receiver's Receipt, the Register's Certificate, dated July 25th, 1902, a certified copy of the patent, dated January 28th, 1904, and a certified copy of a deed dated July 26th, 1902, made by Fred. W. Shaeffer to W. F. Kettenbach and George H. Kester, for a consideration of \$800.00, executed before H. K. Barnett, a notary public, and recorded June 8th, 1903, at the request of the Latah County Abstract Company; all the said papers relating to the east half of the northwest quarter, the southwest quarter of the northeast quarter, and the northwest quarter of the southeast quarter of section 27, township 40 north, of range one west, of Boise meridian.

Mr. TANNAHILL.—The defendants waive any further identification of the papers and documents just offered, but object to the following documents offered in evidence: Object to the document designated timber and stone lands, testimony of claimant, and the cross-examination of claimant in connection with the direct examination, on Form 4-370, the testimony of witness under Act of June 3d, 1878, and August 4th, 1892, the cross-examination of witnesses in connection with the direct examination, on Form 4-371, the testimony of witness under Act of June 3d, 1878, and August 4th, 1892, of witness

(Testimony of Fred W. Shaeffer.)

William Dwyer, and the cross-examination of witness William Dwyer, and the Receiver's Receipt in duplicate, No. 3795; upon the ground that they are irrelevant, incompetent and immaterial. And the defendants severally move to strike out all of the evidence of the witness in relation to action No. 388 and No. 407, on the ground that it is irrelevant, incompetent and immaterial in support of each of those actions, and the documents just objected to are irrelevant, incompetent and immaterial in support of each of the other actions, or in support of any of the actions, being matters relating to the final proof and occurring subsequent to the filing of the sworn statement.

Said documents were thereupon marked by the Reporter as Exhibits 2, 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H, 2I, 2J, 2K, and 2L. [414—84]

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Shaeffer, as I understand you, you began work as janitor of the bank some time before you took up this claim?

A. Yes; it was in March when I went to work for them.

Q. And when was it you took up the claim?

A. Well, I guess it must have been along in June, wasn't it?

Mr. GORDON.—The 5th of May.

WITNESS.—Or May, was it?

Mr. TANNAHILL.—Q. You had got quite well acquainted with Mr. Kester during that time, had

(Testimony of Fred W. Shaeffer.)

you?      A. Well, yes, I was well acquainted.

Q. You were sociable and friendly?

A. Yes, sir.

Q. And you did the usual janitor work around the bank, did you?      A. Yes, sir.

Q. Now, as I understand you, the first—well, you knew that people were taking up timber claims, did you not, seeing them going in and out of the land office?

A. Yes, seeing them going in and out, I knew they were taking up timber claims.

Q. Did you also take care of the land office?

A. Yes, sir.

Q. And you kept the hall in condition leading into the land office, did you not?      A. Yes, sir.

Q. And you had heard a great deal of talk about taking up timber claims?      A. Yes, sir.

Q. Do you remember that you talked with anyone, or made any suggestion to anyone, that you would like to take up a timber claim?      [415—85]

A. Oh, I may have talked about taking up a timber claim. Of course, I might have said something about something of that kind, but it was in a casual way.

Q. And you may have said something of that kind in Mr. Kester's presence that he overheard?

A. Well, I might have—not that I know of though,—not that I know of.

Q. You may have said something of that kind in his presence?

A. I may have; I don't remember, though.



(Testimony of Fred W. Shaeffer.)

Q. Now, do you remember of talking about your sister taking up a timber claim along about that time?

A. Well, I talked to Mr. Dwyer about that, when I got a claim, about getting a claim for my sister, and he told me there was one back—I don't know how far it was from where we were up then. I think I said to him when we went up there on our trip, I spoke to him, or something—I don't remember just when it was—anyhow, I spoke to him about getting a timber claim for my sister.

Q. And he told you that that belonged to a Mrs. Henson, and he would see if she wouldn't relinquish her right?

A. I know he spoke of somebody having a timber claim which he would get for her.

Q. And do you remember that you thought that if you could get that half section there together—one for you and one for your sister—that you would be able to do well out of it, or you would keep it, or something to that effect?

A. Well, I know we talked about getting the claim, but of course I don't remember just all that was said, but I kind of wanted to get a claim for her at that time, I know, I remember that well, and I talked with him about getting a claim for my sister. My sister hadn't come—she wasn't there, but she was coming. I think she came the same day I came down off the train, as I came back from Kendrick.

Q. And when Mr. Kester spoke to you about taking up a claim, as [416—86] I understand you,

(Testimony of Fred W. Shaeffer.)

he told you that you could make \$100.00 out of it?

A. Yes, sir.

Q. If you wanted to take up a claim?

A. Yes, sir.

Q. Or words to that effect? A. Yes, sir.

Q. And as I understand you, in reply to Mr. Gordon's question you said that you didn't know how you was to make that \$100.00, whether it was to sell it to some other company, or to sell it to Kester, or to sell it to anyone, or to keep it?

A. All that was stated was said at that time. He asked me if I had ever taken up a claim, and I told him no, and he said I could make \$100.00 by taking up a claim, and I said all right. Now, that is all that was said at that time. I didn't form any impressions or come to any conclusions, but \$100.00 looked pretty good to me at that time, and I thought if I could make \$100.00, I never thought how, or anything about it, I never came to any conclusions about it, and I just merely said all right, so I suppose you would have to judge just the same as I did, and come to the same conclusions, because it was just merely a passing conversation, and there wasn't either one said one way or the other about it, only that I could make \$100.00 out of it.

Q. You had no intention of doing anything wrong, or violating any law?

A. No, sir, I didn't; if I had I would have told him I didn't want anything to do with it.

Q. And I believe I understood you to say to Mr. Gordon that the only obligation you felt under to Mr.



(Testimony of Fred W. Shaeffer.)

Kester was that you would give him the first or preference right of purchasing it, because he had loaned you the money?

A. Why, sure I would go to them first, or anybody. They supplied the money for me, and of course I would go to them and tell them all about it. [417—87]

Q. That is all the contract or agreement that you have had or that you had with Mr. Kester?

A. That is all that was ever said about it. He said I could make \$100.00, and I said all right, and I didn't ask any more questions, and a few days after he told me if I would go down and get ready to go the next day to Kendrick I would meet Mr. Dwyer there and he would take me up on a claim, and I said all right, and I went.

Q. And you didn't understand that you had any specific agreement to convey your land to anyone before you made your final proof?

A. Well, that was all that was said about it, what I said. That was all that was said about it.

Q. And your sworn statement that you made, that you hadn't agreed to convey it to anyone, before you made your final proof, was true in so far as you know, was it?

A. Well, I don't see hardly—you could draw your own conclusions about it. He said I could make \$100.00, and I said all right. Now, I don't know; I would rather the Court would draw its own conclusions of it, if you can make either one way or the other out of it. If I would say I did or I didn't the



(Testimony of Fred W. Shaeffer.)

other side would have it in for me, and I don't know how to answer the question.

Q. But you didn't understand that you were to deed it to any particular person?

A. Why, I don't know what I could make about it. I never thought anything about it. I was thinking if I could get \$100.00 out of it, or that money out of it, that's all. I didn't think much about it.

Q. But you did feel under obligations to give Mr. Kester the preference right to purchase it, because he had loaned you the money?

A. Why, sure I did. If you had loaned me \$1,000.00 I would say "Why, here, Mr. Tannahill, you let me have the money," and I would go to Mr. Gordon or anybody else, sure. [418—88]

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Shaeffer, just one more question: What was your salary at the bank at the time?

A. I got \$45.00 a month.

Q. And you are employed now just generally, doing work here and there?

A. Yes, sir; I swept the halls and swept the rooms in the building and did things that came up usually—I did most any old thing that came along.

[Testimony of William Haevernick, for  
Complainant.]

WILLIAM HAEVERNICK, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is William Haevernick?

A. Yes, sir.

Q. Where do you reside, Mr. Haevernick?

A. Lewiston, Idaho.

Q. How long have you resided at Lewiston?

A. In Lewiston about 16 years.

Q. Where did you reside in October, 1903?

A. Orofino, Idaho.

Q. What was your occupation at that time?

A. I was in the general merchandise business at that time.

Q. Were you in the general merchandise business as an employee of someone else, or on your account?

[419—89]

A. Well, I had some stock in it. It was an incorporation, and I had some stock in it.

Q. What was the name of this body corporate?

A. The Orofino Trading Company, Limited.

Q. The Orofino what?

A. —Trading Company, Limited.

Q. And you are employed now in what capacity?

A. I am employed at present at the Lewiston Fuel and Transfer Company.

Q. In what capacity are you employed now?

(Testimony of William Haevernick.)

A. As bookkeeper and salesman.

Q. Now, this corporation that you had stock in, do you know the amount of the capital stock?

A. Well, it was approximately about \$7500.00.

Q. Who owned the stock in that concern?

A. Well, Mr. Holmberg and myself owned the principal part of it.

Q. What Mr. Holmberg?      A. A. E. Holmberg.

Q. Alexander E.?

A. No—Axel, I believe.      A. E., I believe,—I am not sure.

Q. How do you spell that Holmberg?

A. H-o-l-m-b-e-r-g.

Mr. BABB.—It seems to me there is better evidence, and I object to it on the ground that there is better evidence of the stockholders.

Mr. GORDON.—Q. Now, will you state as well as you can who owned the stock in that company?

Mr. BABB.—The same objection as last made.

Mr. GORDON.—Answer the question.

A. There was myself, Mr. Holmberg, my wife, and Mr. Holmberg's wife, and Mr. Kettenbach.

Q. What Mr. Kettenbach?      [420—90]

A. Frank.

Q. F. W. Kettenbach?      A. F. W.; yes.

Q. How much stock did you have in that concern?

A. Well, as near as I can—

Mr. BABB.—The same objection. It will be understood that this objection may go to all this class of testimony?



(Testimony of William Haevernick.)

The SPECIAL EXAMINER.—Yes, that may be understood.

WITNESS.—I couldn't state exactly how much I had; it was a small amount; I couldn't state exactly how much it was.

Mr. GORDON.—Q. Well, did you have \$2,000.00 worth of stock?

A. Not much of it; my wife had the largest portion of it.

Q. Well, how much did you and your wife have together?

A. Well, we had \$2,000.00 in money in it, then \$1,750.00 that I owed—\$3,750.00. I gave my stock as security for this \$1,750.0; that was between us.

Q. And who did you secure that from?

A. I borrowed that money from Frank Kettenbach and gave him my stock as security.

Q. Who was the president of that concern at that time? A. Mr. Kettenbach was at that time.

Mr. BABB.—The same objection as to that.

Mr. GORDON.—Q. Do you remember taking up a claim or making an entry under the timber and stone act? A. Yes, sir.

Mr. TANNAHILL.—We object to the evidence of the witness in relation to claims 388 and 407, upon the ground that he is not named as an entryman therein, and his evidence in relation to those two actions is irrelevant, incompetent and immaterial.

Mr. GORDON.—[421—91] Q. I show you Timber and Stone Lands Sworn Statement dated October 26th, 1903, signed William Haevernick, and ask

(Testimony of William Haevernick.)

you if you signed that paper and filed the same in the land office at Lewiston, Idaho, on or about the date it bears?     A. That is my signature.

Q. And you filed it in the land office about the date you made it?     A. I suppose so; yes.

Q. I show you the notice for publication of the same date, and the Nonmineral Affidavit of William Haevernick, and ask you if that is your signature to the Nonmineral Affidavit, and if you filed those papers in the land office?     A. Yes, sir.

Q. I show you the testimony of William Haevernick given at the final proof, dated January 6th, 1904, and ask if that is your signature to that paper?

A. Yes, sir.

Q. And the cross-examination, I will ask you if that is your signature to that?     A. Yes, sir.

Q. Mr. Haevernick, who located you on this timber claim?

A. A gentleman by the name of Mr. Mortimer.

Mr. BABB.—What was his first name?

A. If I ain't mistaken, I think it was Joe.

Mr. GORDON.—Q. And did you have to pay him a location fee?

A. I don't recollect, but I don't believe I did. He was a neighbor of ours there; or rather, he lived right close by.

Q. Do you know who prepared your sworn statement and your other filing papers for you?

A. Well, it was in Orofino, a man by the name of Merrill. It was under the old Shoshone County administration, I believe, and he was [422—92]

(Testimony of William Haevernick.)

Deputy Clerk, I believe, of Shoshone County.

Q. Did your wife take up a claim at the same time that you did?     A. Yes, sir.

Q. And did you and she come down and make your filing at the same time?     A. Yes, sir.

Q. I will ask you whether or not you paid for your wife being located?

A. She paid it all in one check; yes.

Q. No—I say, being located?

A. Oh, for being located? No, I don't think so.

Q. Did Mr. Mortimer locate her, too?

A. Yes.

Q. Now, do you remember the occasion of making your final proof?     A. Sure.

Q. I will ask you if you paid for your claim and your wife's claim at the same time?

A. Yes, sir, I believe I did.

Q. And your wife's name is what?     A. Alma.

Q. A-l-m-a?

A. A-l-m-a. It might have been two checks, I wouldn't say positive. It might have been two checks, I wouldn't say positive; but I think it was one.

Q. But you did pay it?

A. Yes, sir; I drew it on her account.

Mr. BABB.—I object to the evidence as to the check on the ground that there is better evidence.

Mr. GORDON.—Q. Do you know where those checks are?

A. They were regularly returned into the Orofino Trading Company. [423—93]



(Testimony of William Haevernick.)

Q. Well, what became of them?

A. I beg pardon?

Q. What became of those checks?

A. Well, it was returned again to the Orofino Trading Company after it had been deposited. It had been through the Idaho Trust Company, and then back again, and was charged up to our account, I guess. In the course of business they were returned to us again at Orofino.

Q. And what have you done with them?

A. They was there at the time, I guess.

Q. I say, where are the checks now?

A. I don't know.

Q. Well, have you destroyed them, or lost them?

A. I didn't have charge of them.

Q. What?

A. The bookkeeper (Mr. Holmberg) had charge of it.

Q. Now, let me understand that: Did you draw a check on this concern?      A. Yes, sir.

Q. And was it a banking concern?

A. We done a certain amount; we issued exchange on Spokane and other towns, and received deposits and the like of that, and we carried our own checks.

Q. You received deposits from the general public?

A. Yes, sir.

Q. And did you have any money on deposit at that time?

A. No. They were charged to my account.

Q. Now, explain how they were charged to your account. What do you mean by that?

(Testimony of William Haevernick.)

A. Well, they were charged to my running account. I drew a salary at that time, I forget now what it was, about \$100.00 to \$125.00, and between Mr. Holmberg and myself we agreed that at the end of the business year these charges against us would be liquidated by the profits [424—94] that had accrued during the business year, if our salary—if we hadn't saved enough out of our salaries to cover it.

Q. Now, if I may understand you—it seems a little unusual to me, anyhow,—you drew checks on this corporation, and those checks were held in the treasury of the concern, and there was a settlement made once every year of the checks that you and the other member drew on the company?

A. They were just simply charged to our open account.

Q. And if there were enough profits at the end of the year to liquidate those checks, why they were taken up that way; and if there were not you would pay the difference? Is that the way I understand you?

A. Well, there was a little balance against me when I settled up, but it was all liquidated.

Q. Well, I am not inquiring into that. I want to know the method in which they got money out of that concern?

A. Well, I couldn't explain it, only when that check came in it was charged against me on an open account.

Q. Well, you didn't have any account there, as I understand it?

(Testimony of William Haevernick.)

A. An open account. Well, I had my salary account, and what provisions I drew out of it, it was all charged against me on my open account, the same as this check was charged against me on my open account. When I paid my grocery bill I gave a check for it, and when I paid my butcher's bill I gave a check for it, and it was charged against me on an open account.

The SPECIAL EXAMINER.—Well, your corporation there did a sort of a banking business, then?

A. Yes; it was on a small scale.

Q. When you drew a check on that corporation it was charged to your account with the corporation?

A. Yes, sir.

Q. Against you? [425—95] A. Yes, sir.

Q. On your running account?

A. Yes, sir—just an open account.

Q. You had a sort of a mercantile department and a banking department; wasn't that it?

A. No. Sometimes I had a little balance coming to me, and sometimes I didn't. Most of the times it was against me, and in red ink, though. (Laughing.)

Mr. GORDON.—Q. And how long after you made your proof did you negotiate for a sale of this property?

A. Well, it was in the neighborhood of about 12 months, I should judge—nine or ten or twelve months—I couldn't say positively.

Q. And with whom did you negotiate?

A. I transacted the sale to Mr. Kettenbach.

Q. And did you sell it to him? A. Yes, sir.



(Testimony of William Haevernick.)

Q. And what did he give you for it?

A. Now, I couldn't say positively. It is between \$650.00 and \$800.00; I wouldn't say positively.

Q. Well, do you remember what your agreement with him was, as to what you would receive from it, when you negotiated with him—what he told you he would pay you for it?

A. No. He just merely told me what he would give me for it. I asked him if he would like to buy it, and he told me what he would give me for it.

Q. Well, do you remember what that was?

A. No, I don't remember the amount exactly.

Q. Well, that negotiation was for your entry and for your wife's also?

A. Yes, sir—all three-quarter sections, yes, sir.

Q. And one of you got a 40 acres and the other got an 80 acres, [426—96] is that correct?

A. Yes, sir.

Q. Now, how was this settlement made? Did you get any real money for your claim?

A. Well, it was in making a settlement when I sold out, and how the settlement was exactly made I don't know. As I say, I was in red ink; or rather, I was indebted to the Orofino Trading Company one way or the other, and when the settlement was made it was in the whole transaction, because Mr. Anderson, the gentleman that bought me out, he borrowed some money from Mr. Kettenbach, and it was such a mixed up affair couldn't explain it to-day how it was. It was in the settlement we had, anyway; it was in full settlement for the business I done with the Idaho

(Testimony of William Haevernick.)

Trust Company and the Orofino Trading Company; it was all liquidated in the settlement.

Q. And you don't know how it was settled?

A. I couldn't trace it to-day if I tried.

Q. Do I understand that this claim was turned in to settle your account with the Orofino Trading Company?

A. Some way that way, yes, sir. It was there to straighten up my account with the Orofino Trading Company. I was behind.

Q. Well, was there any agreement as to what you were to get for it, or was it turned in?

A. No, sir, there was no agreement at all. I just merely asked him what he would give for it, and he told me what he would give for it, and I kind of hemmed and hawed and thought it was too little, I recollect well.

Q. You made all the negotiations for the sale of your wife's property?      A. Yes, sir.

Q. I will ask you whether you had any agreement with Mr. Frank Kettenbach before you made your entry that you would sell that land to him?  
[427—97]      A. No, sir.

Q. Did you ever tell anybody that you had an agreement of that kind?

A. No, sir, I didn't tell anyone.

Q. You never made a statement of that kind to anybody?

A. After I got the land I made a statement to some parties that was interested in the flume business that



(Testimony of William Haevernick.)

I had taken up the land, or intended to take it up.

Q. Who were those parties?

Mr. BABB.—I object to this line of inquiry, because it is not limited, and don't designate the person, or the time or place, and lays no foundation for impeachment; and furthermore, the Government would have no right to impeach its own witness.

Mr. GORDON.—Q. Who were those parties that you had this conversation with?

A. Well, I think one of them was Jim Jump. He was a partner of Mr. McGill's.

Q. Was that before you got your final receipt?

A. Oh, no, not before. After I intended to take it up and made up my mind, after Mr. Mortimer showed me the land, and Mr. Jump was interested in the flume business, and I thought it might be a good place to start, and some of it was in the bottom of the creek, and I mentioned it to him.

Q. Now, what did you mention to him?

Mr. BABB.—We object to this conversation as immaterial.

WITNESS.—Well, I don't know just what that was. I recollect well that I mentioned to him that I took up this land.

Mr. GORDON.—Q. Well, that is not what I am getting at. I asked you if you told anybody that you had an agreement with Mr. Kettenbach, as I understand it, and then this conversation you bring up was in response to my [428—98] question?

A. No, sir. I never had any agreement with Mr. Kettenbach in regard to it at all.



(Testimony of William Haevernick.)

Q. And you never told anybody that you had an agreement?

Mr. BABB.—The same objection.

WITNESS.—No, sir, I never. [429—99]

Q. Do you remember, when you went to the land office to make your final proof, on the cross-examination that you identified here as having been signed by you, this question being asked you, question No. 17: “Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession? Answer. Earned it in my merchandizing business. Two years.”

Mr. TANNAHILL.—We object to it on the ground that it is not inconsistent with any statement he has heretofore made, and on the further ground that it is irrelevant and immaterial and a matter relating to final proof, and a matter long subsequent to the filing of the application.

A. Well, I did earn it in merchandising. I had a merchandising business then; I had that interest in the store there.

Mr. GORDON.—Q. Did you have that amount of money in your actual possession for two years?

A. I had \$2,000.00 in my possession in actual money.

Q. What do you call actual money?

A. Which I put into the Orofino Trading Company.

Mr. BABB.—Objected to as immaterial and irrelevant.

Mr. TANNAHILL.—And our same objection goes

(Testimony of William Haevernick.)

to all the questions in evidence along this line.

THE SPECIAL EXAMINER.—Yes, the reporter can note that the objection runs to all that line of questions, without repeating it.

WITNESS.—I say that I had at that time earned, one way and another, two thousand dollars, and I had that invested in the Orofino Trading Company at that time.

MR. GORDON.—Q. Is that what you call having money in your actual possession? Is that what you meant?

A. I might have had a small balance to my credit there, or some balance to my credit there, which I couldn't accurately say right now.

Q. But still you turned this claim over to liquidate your [430—100] indebtedness to that corporation though, didn't you? A. No.

MR. TANNAHILL.—We object to that as irrelevant and immaterial.

A. No, I didn't turn it in to the company; I sold it outright.

MR. GORDON.—Q. Did you get any money for it?

A. I don't know; it went into the settlement with the Orofino Trading Company.

Q. The money you got out of it was turned in to liquidate your indebtedness to the company?

A. A portion of it; I don't know how the balance of it went. I got out of the whole transaction. I got \$2,000.00 out of it, and I don't know how it was. It was such a mixed-up affair that I couldn't tell right now, or wouldn't try to.



(Testimony of William Haevernick.)

Mr. GORDON.—We offer in evidence timber and stone sworn statement of William Haevernick, dated October 26, 1903; the notice of publication, dated October 27, 1903; nonmineral affidavit of William Haevernick, bearing the same date; the testimony of William Haevernick given on final proof, dated January 6, 1904, and the cross-examination thereof; the testimony of the witnesses given on final proof; the receiver's receipt and the register's certificate, dated January 6, 1904; certified copy of the patent, dated November 1, 1904, all of said papers relating to the entry of William Haevernick to the southeast quarter of the southeast quarter of section 23, the northeast quarter of the northeast quarter of section 26, township 37 north of range 2 east, Boise meridian.

The above exhibits were thereupon marked 3A, 3B, 3C, 3D, 3E, 3F, 3G, 3H, 3I, 3J, 3K, 3L, 3M, 3N, and 3O.

Mr. TANNAHILL.—The defendants waive any further identification of the papers just offered in evidence but respectively object to the following documents just offered in evidence: Proof of publication, bearing date January 4, 1904; testimony of witness Joseph Mortimer; testimony of Axel [431—101] Gabrielson, and cross-examination of witness Axel Gabrielson; testimony of claimant William Haevernick, and cross-examination of claimant William Haevernick; receiver's final receipts in duplicate, upon the ground that they are irrelevant and immaterial, and relate to final proofs and matters



(Testimony of William Haevernicks.)

occurring subsequent to the filing of the sworn statement.

Mr. BABB.—You might note there that Frank W. Kettenbach and the Clearwater Timber Company severally object to all the testimony on final proof as to anything that took place after the filing of the original sworn statement, on the ground that it is immaterial and irrelevant.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Haevernicks, at the time you filed your sworn statement October 26, 1903, had you any agreement with anyone, especially Frank W. Kettenbach, that you would convey the land to him after you acquired title to it?      A. No, sir.

Q. Then your sworn statement, as follows: "That I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that is true, is it?      A. Yes, sir.

Q. And it was true at the time you made it?

A. Yes, sir.

Q. How long after you acquired title to the land

(Testimony of William Haevernick.)

was it before you negotiated a sale with Mr. Kettenbach?

A. I couldn't say exactly; it was between seven or eight or [432—102] twelve months. I couldn't say exactly. It was after I sold my interest in the Orofino Trading Company.

Q. There was no talk between you and Mr. Kettenbach that you would sell him this land, before you made final proof? A. No, sir.

Mr. TANNAHILL.—That is all.

Mr. GORDON.—That is all. [433—103]

**[Testimony of Mrs. Alma Haevernick, for Complainant.]**

Mrs. ALMA HAEVERNICK, a witness called on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Alma Haevernick, are you?

A. Yes, sir.

Q. And you are the wife of the gentleman, Mr. William Haevernick, who just left the stand?

A. Yes, sir.

Q. Mrs. Haevernick, do you remember taking up a claim under the timber and stone act in October 1903? A. I do.

Mr. GORDON.—Can we just stipulate that she signed these papers, without showing them to her? They are the original land office papers.

Mr. TANNAHILL.—Yes.

(Testimony of Mrs. Alma Haevernick.)

Mr. BABB.—Yes.

Mr. GORDON.—I will just have her identify the signature to the sworn statement.

Q. Mrs. Haevernick, I show you timber and stone land sworn statement, dated October 26, 1903, signed by Alma Haevernick, and ask you if you signed that paper and filed it in the land office about the date it bears? A. I did.

Q. I show you the testimony of Alma Haevernick taken at final proof, January 6, 1904, and the cross-examination thereof, and ask you if that is your signature to that? Can you see it?

A. I can see it. That one is mine.

Q. Well, that is the only signature there is there. Mrs. Haevernick, who located you on your timber claim? A. A man by the name of Mortimer.

Q. Did you pay him a location fee?

A. I don't think so. [434—104]

Q. And when you filed the sworn statement and the other filing papers, when you initiated your entry, at the land office, did you pay a filing fee?

A. Do you mean the first papers?

Q. Yes. A. Yes.

Q. And did you pay that yourself, or did your husband pay it for you? A. My husband paid it.

Q. And when you made your final proof and purchased the land in the land office did your husband also pay that fee? A. He did.

A. And did you negotiate for the sale of this land yourself, or did your husband do the negotiating?



(Testimony of Mrs. Alma Haevernick.)

Mr. BABB.—We object to that as immaterial and irrelevant.

A. The land was all sold in a body.

Mr. GORDON.—Q. Did you do any of the negotiating? A. No.

Q. You did what your husband advised you to do in the matter? A. I did.

Q. And did you know to whom you sold?

A. We sold it to Frank Kettenbach.

Q. Did you get any of the money from the sale of that? A. No.

Q. May I ask you if your husband made the negotiations and sold your claim and his claim at the same time? A. At the same time.

Q. And brought you the deed and you signed it?

A. I signed it.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Mrs. Alma Haevernick, dated October 26, 1903; the notice of publication of Alma Haevernick; the nonmineral affidavit; the [435—105] testimony of Alma Haevernick, given on final proof, dated January 6, 1904, and the cross-examination thereof; the testimony and the cross-examination of the witnesses on final proof, and the cross-examination thereof; the receiver's receipt and the register's certificate, dated January 6, 1904; certified copy of the patent, dated November 1, 1904, issued to Alma Haevernick, all relating to the entry of the southwest quarter of the northeast quarter of section 26, township 37, north of range 2 east, Boise meridian.

(Testimony of Mrs. Alma Haevernicks.)

The above exhibits were thereupon marked 4A, 4B, 4C, 4D, 4E, 4F, 4G, 4H, 4I, 4J, 4K, 4L, 4M, 4N, and 4O.

Mr. TANNAHILL.—We object to all of the papers relating to the final proof, on the ground that they are incompetent, irrelevant and immaterial and we object to all of the evidence, and especially as the same applies to No. 388 and 407, on the ground that they are not named as parties and that this entry is not involved in the last two cases mentioned, and it is irrelevant and immaterial for any purpose. The defendants waive any further identification of the papers.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mrs. Haevernicks, you had no agreement or understanding with anyone to convey this land to them, before you made your final proof, had you?

A. No, sir.

Q. And you had no such agreement at the time you filed your sworn statement? A. No.

Q. You took it up for your own use and benefit?

A. Yes, sir.

Mr. TANNAHILL.—That is all.

Mr. BABB.—Q. Mrs. Haevernicks, I believe you stated that you did not personally receive any of the purchase money Mr. Kettenbach paid to your man?

A. Not individually, no. [436—106]

Q. You did not mean by that that the deed to

(Testimony of Mrs. Alma Haevernick.)

him was a gift, or anything of that kind, did you?

A. No.

Q. It was a sale, was it?      A. It was a sale.

Q. Do you remember now the amount that he paid for the land?      A. No, I do not.

Q. It was some hundreds of dollars, was it not?

A. Yes, near \$800.00, but I am not sure.

Q. Your husband attended for you to the receipt and disbursement of the money, did he?

A. He did.

Q. With your consent?      A. He did.

Q. And the money was actually paid and disbursed in accordance with your wishes, was it?

A. The money was paid.

Redirect Examination.

(By Mr. GORDON.)

Q. Mrs. Haevernick, how do you know the money was actually paid and disbursed?

A. Because it was turned over for a debt.

Q. To whom was it turned over?

A. To the Orofino Trading Company.

Q. Was it to liquidate a debt that you and your husband owed Mr. Frank Kettenbach?

A. No, it was personal debts, it was debts we contracted ourselves.

Q. But did you and your husband borrow \$1700.00 from Mr. Frank Kettenbach?      A. He did.

Q. And wasn't this in part payment of that?

A. I don't remember that it was.

Q. Well, what debt have you in mind, if you don't



(Testimony of Mrs. Alma Haevernick.)

mind telling, [437—107] that it was in payment of?

A. Well, it was from actual living expenses.

Q. With the Orofino Company?

A. With the Orofino Trading Company.

Q. And that was the final settlement, was it?

A. That was the final settlement.

Q. But at the time you settled you and your husband drew out \$2,000.00 in cash, out of the company, didn't you?

A. That was the payment Mr. Anderson paid to us when we sold the property, and this other was a payment to Mr. Holmberg, different parties.

Mr. GORDON.—That is all.

At this time an adjournment was taken until ten o'clock to-morrow morning. [438—108]

On Wednesday, the 24th day of August, 1910, at ten o'clock A. M., the hearing was resumed.

**[Testimony of William J. White, for Complainant.]**

WILLIAM J. WHITE, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is William J. White?

A. Yes, sir.

Q. Mr. White, where do you reside?

A. Orofino.

Q. Idaho? A. Yes, sir.

Q. How long have you resided at Orofino?

A. About 14 months.

(Testimony of William J. White.)

Q. And previous to that time where did you reside?

A. I lived up on my homestead, 14 miles north of Pierce City.

Q. And where did you reside in April, 1904?

A. In April, 1904?

Q. Yes, sir.

A. That was six years ago. I think at that time I was living in Lewiston.

Q. You have resided in Idaho since 1904, anyhow?

A. Yes, sir.

Q. Since the first part of 1904? A. Yes, sir.

Q. Are you married? A. Yes, sir.

Q. What is your business?

A. I am in the banking business now.

Q. What was your business in 1904? [439—109]

A. Well, if I was residing in Lewiston I was running a ferry at that time.

Q. Running a ferry? A. Yes, sir.

Q. Where is that crossing?

A. Right here crossing the Clearwater, right below the bridge.

Q. Are you related by marriage or otherwise to Mr. William F. Kettenbach? A. Yes, sir.

Q. What is the relationship?

A. He is my brother-in-law; he married my sister.

Q. He married your sister? A. Yes, sir.

Q. Are you acquainted with Mr. George H. Kester? A. Yes, sir.

Q. Are you in any way related to him?

A. Yes, sir; he is my brother-in-law.

(Testimony of William J. White.)

Q. He is your brother-in-law?      A. Yes, sir.

Q. You both married sisters?      A. Yes, sir.

Q. Are you related to Mrs. Mamie P. White?

A. She is my wife.

Q. Oh, she is your wife?      A. Yes, sir.

Q. Is Elizabeth White your mother?

A. Yes, sir.

Q. Do you know the relationship between Mr. William F. Kettenbach and Mr. Frank W. Kettenbach?      A. Frank is Will's uncle.

Q. You took up a timber claim on April 25th, 1904, and I will [440—110] ask you how long prior to that time you went to view this land?

Mr. TANNAHILL.—We object to the evidence of the witness in support of bill and actions No. 388 and No. 407, upon the ground that the witness nor his wife (Mamie P. White) are named in either of these bills or in either of the actions, and his evidence is wholly irrelevant and immaterial as the same relates to these two particular suits.

The SPECIAL EXAMINER.—You may answer the question, Mr. White.

The last question was thereupon repeated by the Reporter.

WITNESS.—Well, I couldn't say exactly; probably—Oh, it might have been a month—I don't remember.

Mr. GORDON.—Q. It was some time prior?

A. Yes, sir.

Q. And with whom did you go to view the land?

A. With whom?



(Testimony of William J. White.)

Q. Yes.      A. With Mr. Dwyer?

Q. Mr. William Dwyer?      A. Yes, sir.

Q. And did you and Mr. Dwyer go alone, or did others compose the party?

A. Well, there was several in the party, six or seven of them; my mother and my wife and Mrs. Kester.

Q. Who is Mrs. Kester? What is her name?—Edna P. Kester?      A. Yes, sir; Edna P. Kester.

Q. Did Mrs. Martha E. Hallett go along with that party?      A. Yes, sir.

Q. Well, is she related in any way to the family?

A. No, I think not.

Q. Who arranged for that party to go?

A. Why, Mr. Dwyer, I believe. We wanted a claim.

Q. Mr. Dwyer wanted what? [441—111]

A. Mr. Dwyer took the party in the woods at the time we went in.

Q. Do you know whether or not at the time you went to view this land it was open to entry?

A. Yes, sir, it was.

Q. It was or wasn't?      A. It was.

The SPECIAL EXAMINER.—Just speak a little louder, Mr. White.

WITNESS.—It was, yes.

MR. GORDON.—Q. I can't hear.

A. It was.

Q. It wasn't?

A. It was open for entry, yes, sir.

The SPECIAL EXAMINER.—Just speak a little

(Testimony of William J. White.)

louder, Mr. White, so they can hear you distinctly.

Mr. GORDON.—Q. What were your arrangements with Mr. Dwyer?

A. He was to locate me on a claim, and I was to pay him \$100.00.

Q. Were they each of them to pay him \$100.00?

A. Yes, sir.

Q. And did you make the arrangements for the rest of them, or who made the arrangements?

A. No, I didn't make the arrangements for anyone except myself, only my wife had a stone and timber act and she wanted a claim too, and we made the arrangements, or rather I made the arrangements for she and I.

Q. Now, you say your wife had a timber and stone act.

A. She had a right to take up a claim under the stone and timber act.

Q. Do you know whether or not there were any homesteaders on any of the claims—on the claims on which you filed?

Mr. TANNAHILL.—We object to that as incompetent, irrelevant and [442—112] immaterial.

Mr. GORDON.—Answer the question.

A. No; there were no homesteaders that I know of.

Q. And you didn't have to purchase a relinquishment from anyone, did you?      A. No, sir.

Q. And neither did your wife, so far as you know?

A. No, sir.

(Testimony of William J. White.)

Q. Now, where did you go to view this land—what place?

A. We went to Orofino, and from there into Pierce City, and from there we went out on Rheese Creek, where these claims lie just a short ways from the trail; we went out to Rheese Creek, and up on Deer Creek, to Brown's cabin.

Q. Whose cabin?

A. Brown's cabin, they call it. It is just simply a cabin built by a Mr. Brown; and from there we went to our claim.

Q. Now, before you went to look at this land, did you have in mind any particular claim that you were going to locate?

A. Well, I can't say that I did exactly. I knew where these claims were located, yes, sir.

Q. Had you ever seen a plat of them?

A. I think that I had; I couldn't say for sure.

Q. Where?

A. Well, I think that Mr. Dwyer had some plats, and showed us about where our claims would be.

Q. I didn't hear the last of that.

A. I say Mr. Dwyer had some plats, and of course at that time I couldn't tell much about a plat by looking at it.

Q. And where did he show you these plats?

A. Well, I couldn't—I don't know as I can tell you just where it was when he did show them to us.  
[443—113]

Q. Did you ever talk with your brother-in-law, Mr. Kettenbach, about taking up a claim?



(Testimony of William J. White.)

A. Not any more than just he knew we were going to take up claims.

Q. And did you discuss with him the nature of these claims and the amount of timber that was on them?

A. No, I don't know as we did, only he said they were pretty good claims—or rather, Mr. Dwyer did.

Q. And where did you have that talk with Mr. Kettenbach?

A. Well, I couldn't—I don't know as I can say. We talked about the claims and talked about locating on them; I couldn't say any particular place.

Q. Do you remember whether or not Mr. Dwyer was present when you had this talk?

A. No, sir, I don't remember whether he was or not.

Q. And did Mr. Kettenbach have any estimates or other data that he showed you to indicate that he knew how much timber was on the claims?

A. No, sir, not that I remember of.

Q. He just told you that they were pretty good claims?      A. Yes.

Q. And did you discuss any of the claims— This was before you went to look at the claims, wasn't it?

A. Yes, sir. Well, I'll tell you, I don't remember so much about it, it has been so long ago, about discussing them with Mr. Kettenbach. I know that we talked about claims and about taking them up.

Q. Well, I say, you talked with him about the propriety of taking them up before you took them up?      A. Yes, sir.

(Testimony of William J. White.)

Q. And did you talk with him about your wife's claim, too, at the same time?

A. Not any more than telling him she wanted a claim, and we had [444—114] each of us a stone and timber right that we wanted to use, if we could.

Q. Were you advised before you went to the timber how much timber was on these timber claims?

A. No.

Q. Did you know what the claims were worth before you went to see them?      A. No, sir.

Q. No one had ever advised you?      A. No.

Q. And were you to pay a location fee?

A. Yes, sir.

Q. To whom?      A. To Mr. Dwyer.

Q. And how much was it?      A. \$100.00.

Q. \$100.00?      A. Yes, sir.

Q. How long were you in the timber on the occasion when you went to view it?

A. Well, I don't remember just exactly how long we were in there. I think it was two or three days, somewhere along there. I know we were out about a week, I believe, that we were gone.

Q. Then you returned to Lewiston?

A. Yes, sir.

Q. And why didn't you go to the land office to file immediately after you returned?

A. Why did I go to the land office?

Q. Why did you not go to the land office immediately after you returned?

A. Well, I don't remember whether I did go immediately after I returned or not.

(Testimony of William J. White.)

Q. Do you remember the month that you were up in the timber? [445—115]

A. No, I don't think I do. It seems to me like— Well, I don't remember what month it was.

Q. Who went over the timber with you?

A. Why, Mr. Dwyer showed me the timber.

Q. Did he show you the corners? A. Yes, sir.

Q. And went all through the timber with you?

A. Well, I don't know as we went all through the claims. We went kind of across the claims and he showed us where the corners were.

Q. Was there any other locator along?

A. Well, Mr. Dwyer had a man working for him and his name was Bliss, and I don't remember whether Mr. Bliss was with us when we went on the timber or not.

Q. Now, wasn't that the fall before you located that you were over that timber?

A. Well, I couldn't say for sure. It has been so long ago that we were in there that I don't remember whether we came right up and filed, or just how long it was.

Q. I notice from a paper you filed in the land office, called the testimony of claimant on final proof, in answer to the question when and in what manner you inspected the land, the answer is "October 13th, 1903, went over the land on foot with Edwin Bliss."

A. With Bliss?

Q. And does that bring back to your mind the occasion of being up there, and the time of the year it was?



(Testimony of William J. White.)

A. Well, I remember that Mr. Bliss was in the party, and I think he might have went with us when we went over. We were all together when we went out there, and I couldn't say positively.

Q. Who notified you, if anyone, when to appear at the land office and file on this claim?

A. I don't remember of anyone notifying me. Don't they tell you when to come, when to file your application? [446—116]

Q. What is that?

A. Don't they tell you when to make the application?

Q. No; you are confounding the application with the final proof. I mean were you notified of the time you should go to the land office and file your sworn statement—your initial paper?

A. I don't remember.

Q. Now, do you remember whether or not when you went there that you formed in a line?

A. In the land office?

Q. Yes. A. Yes, sir.

Q. Now, do you remember how many people were in that line, or approximately?

A. Well, when the line first formed I believe there was about probably 12 or 15, and then they kept getting more—all the people who could get in the hall, anyway.

Q. Now, do you remember about what number or position you held in that line?

A. No, I don't believe I do; I was probably along 15 or 20, or somewheres along there.

(Testimony of William J. White.)

Q. And was your wife in the line, too, with you?

A. Well, she— I don't think that— Well, she probably was in the line when we went to file. I don't remember distinctly whether she was or not.

Q. And was your mother there, too?

A. She probably was.

Q. Have you any recollection of it?

A. Well, I don't know positively whether she was or not; she probably was, though.

Q. How long did you remain in the line before you filed? A. I think I was there a day.

Q. Did you remain there overnight? [447—117]

A. I think that I did, part of the night.

Q. You mean that you went there late at night and remained till the next morning, or what?

A. Well, I think that I was there one evening. It seems to me that this line formed—say for instance it formed in the afternoon of to-day, and we would file to-morrow, and I think I was in line—oh, I came in there after the line started—after I seen that they started the line-up.

Q. Now, did anybody advise you that the line had started—that people had started to form a line there?

A. Well, I don't think that they did, any more than just knowing that they had started one.

Q. Did you employ anyone to hold a place in line for you at any time?

A. Well, I don't remember distinctly in regard to that, but I probably would get someone to hold my place if I had to step out.

(Testimony of William J. White.)

Q. Yes; but did you have anybody holding a place in line for you?     A. No, sir.

Q. Before you got there?     A. No, sir.

Q. And you didn't employ anyone to hold a place in line either for your mother or your wife?

A. No, sir, I didn't.

Q. I show you, Mr. White, a timber and stone lands sworn statement of William J. White, dated April 25th, 1904, and ask you if that is your signature to that paper?     A. Yes, sir.

Q. And whether you filed the same in the land office at Lewiston about the date it bears?

A. Yes, sir; that is my signature.

Q. And you remember filing it in the land office?

A. Yes, sir. [448—118]

Q. And that is your signature to the nonmineral affidavit of the same date?     A. Yes, sir.

Q. I show you the testimony of William J. White taken at the final proof, dated July 14th, 1904, and ask you if that is your signature?     A. Yes, sir.

Q. I show you also the cross-examination taken at the same time as that. Is that your signature to that?     A. Yes, sir.

Q. Mr. White, who prepared that sworn statement that I have just shown you?

A. What was the question?

Q. Who prepared this sworn statement and non-mineral affidavit that I have just shown you?

A. Well, I don't remember, if it wasn't prepared in the land office.

Q. What?



(Testimony of William J. White.)

A. I don't remember who prepared that, if it wasn't prepared in the land office.

Q. Did you prepare it yourself?      A. No, sir.

Q. Did you pay anyone for preparing it for you?

A. Well, I couldn't say for sure whether I did or not, whether I had that prepared before I went and filed on the land or not. It has been so long ago that I don't remember the proceedings in regard to filing on it.

Q. Were you ever given a description of this land when you were located by Mr. Dwyer?

A. I was given a description, yes, sir.

Q. What did you do with the description? Did you take it to somebody's office and have it prepared, or did somebody prepare the papers and bring them to you? [449—119]

A. Oh, I think I took them to Mullan, who was a lawyer on the same floor as the land office. I think probably that he prepared them.

Q. Is that the gentleman referred to sometimes as Captain Mullan?      A. Yes, sir.

Q. And you had those papers prepared before you went in the line-up at the land office?

A. Well, I don't remember distinctly, as I told you, but if I did he prepared the papers, I think. I have a faint recollection of being in his office and having some papers prepared.

Q. Mr. Dwyer didn't attend to that for you?

A. No.

Q. And nobody else?

A. Well, unless it was Cap. Mullan, or they were

(Testimony of William J. White.)

fixed in the land office.

Q. Yes, but I mean— A. No, sir.

Q. If Captain Mullan prepared them, you went there and had them prepared yourself?

A. Yes, sir.

Q. You didn't send somebody else, and somebody else was not acting for you in that capacity?

A. No, sir, I don't think so.

Q. Do you remember how much you paid in the land office when you filed those papers—the first papers? A. No, sir.

Q. Did you pay anything for your filing fee and notice for publication?

A. I think that I did, but I don't remember the exact amount.

Q. And have you any recollection whether or not you paid the filing fees for your wife and the other expenses incidental to initiating that entry of hers?

A. No. I believe she had her papers made out herself. [450—120]

Q. Made out herself, you say?

A. She attended to her papers, those that she had made out. I don't remember of paying anything for her.

Q. Do you know what the value of this claim which you entered was, when you made your filing papers? A. No, sir.

Q. Did you have any idea of what it was worth?

A. Well, I imagined when I filed on that claim that it was worth— Well, I didn't know what it was worth.

(Testimony of William J. White.)

Q. And did you know or do you know now how many feet of timber—marketable timber—was on the quarter section on which you filed?

A. At the present time, I had the claim estimated I think about two years ago, and I think there was about five million feet on it.

Q. Five million feet?      A. Yes, sir.

Q. Who did you have estimate it?

A. A fellow by the name of Bert Robinson.

Q. Bert Robinson?      A. Yes, sir.

Q. And did you know of a market for timber claims at that time?

A. When I had it estimated?

Q. No—I mean when you made your entry?

A. No, I didn't.

Q. You didn't know anyone who was buying timber claims?

A. Yes; Kester and Kettenbach were buying a few, and Sheldon and Clark I believe were buying, and the Clearwater Timber Company were buying timber claims.

Q. Did you know what they were paying for claims?

A. Well, they didn't seem to have any schedule price. Some claims would probably go for \$700.00 or \$800.00, or \$1200.00.

Q. What is the value of your claim to-day?

Mr. TANNAHILL.—We object to that as immaterial. [451—121]

Mr. GORDON.—Answer the question.

A. The claim is worth about \$5,000.00, I think.



(Testimony of William J. White.)

Q. Were you notified by anyone of the time to make final proof?     A. To make final proof?

Q. Yes.

A. Yes, sir; I received a notice from the land office.

Q. And you went to the land office?

A. Yes, sir.

Q. And did your wife go with you?

A. I think that she did. I don't remember distinctly.

Q. Was Mrs. White there at the same time that you made your proof?     A. My mother?

Q. Yes.

A. Well, I couldn't say for sure. I don't hardly think that she was. She might have been.

Q. Do you know whether Mrs. Kester and Mrs. Hallett were there?     A. No, I don't.

Q. And do you remember how much you paid at the land office when you made your proof?

A. No, I don't.

Q. Do you have any idea of approximately what you paid?

A. Well, I think about \$200.00—\$1.25 an acre. I know that I paid \$1.25 an acre on land that I homesteaded, and I don't remember exactly what my stone and timber was.

Q. You have no independent recollection?

A. No, sir.

Q. As to whether you paid \$200.00 or \$300.00, or whether you paid \$800.00?

A. No, I didn't pay \$800.00.

Q. And did you pay for your wife's claim?

(Testimony of William J. White.)

A. No; I think she paid for that herself. [452—122]

Q. And did you furnish the money to her to pay for it? A. Yes, sir; I gave her the money.

Q. And do you remember whether you gave her the money the day she made her proof?

A. No, I don't believe I did. I think I gave it to her some time before that.

Q. How long before?

A. Oh, I think quite a while before. I remember of giving her some money while we were over in Montana, shortly after we were married, and I gave her some money over there; I gave her a couple of thousand dollars, and she had some of that.

Q. And how long were you married before you entered a timber claim?

A. Well, I have been married nine years.

Q. And you were married about three years then?

A. Yes, sir.

Q. And did you give her this money while you were on your honeymoon?

A. No. We were over in Montana, living in Kalispell, when I gave her this money.

Q. Well, just shortly after you were married?

A. Yes, sir.

Q. And do you remember the form in which you paid your money in the land office, whether you paid it in cash or whether you paid it by check?

A. I paid it in cash, if I remember right.

Q. And did you keep your money about you in cash, or did you keep it in some bank?

(Testimony of William J. White.)

A. I kept it in the Lewiston National Bank.

Q. And do you remember whether you drew it out of the bank the morning on which you—

A. I think probably that I would have drawn it out in the morning. [453—123]

Q. Mr. White, have you the title to your claim at the present time? A. No, sir.

Q. Have you conveyed it to anyone?

A. Yes, sir.

Q. To whom? A. To Mrs. Elizabeth White.

Q. To Mrs. Elizabeth White? A. Yes, sir.

Q. That is your mother? A. Yes, sir.

Q. And how long ago did you convey it to her?

A. I think it was right about the first of the year.

Q. This last year? A. Yes, sir.

Q. Do you know whether the deed has been recorded or not? A. I think that they have.

Q. Do you mean the beginning of the year 1910?

A. Yes, sir.

Q. Do you mind telling us what you sold that claim for—how much?

A. I sold her four claims—four quarter sections—and got \$4,000.00 each for them.

Q. How is that?

A. I sold four quarter sections for \$4,000.00 for each.

Q. For each one? A. Yes, sir.

Q. Now, how long had you had these quarter sections when you sold them?

A. Well, my stone and timber claims, I think I had them about six years.



(Testimony of William J. White.)

Q. Did you sell your wife's claim, too? [454—124]

A. Yes; we sold all the claims we had up there, four of them, and we had a claim over on Brown's Creek.

Q. Now, let me see if I get this right: To make up these four, you sold your stone and timber entry?

A. Yes, sir.

Q. And your wife's? A. Yes, sir.

Q. And then your homestead? A. Yes, sir.

Q. Now, what made up the fourth one?

A. There was a claim that I bought over in—well, I don't remember the township.

Q. Well, I mean from whom did you buy it from, the entryman?

A. Well, a man by the name of Clave.

Q. What is the name? A. Clave, I think.

Mr. TANNAHILL.—Cleves.

The SPECIAL EXAMINER.—Cleves, is it?

A. Yes, sir.

Q. C-l-e-v-e-s?

A. I think that is the way he spells it.

Mr. GORDON.—Q. And when did you buy that claim?

A. I think it is about three years ago I bought it.

Q. Had you had an opportunity to sell your stone and timber claim before?

A. Well, I probably—not at a very good price; no.

Q. Had you ever offered to sell it to anyone before? A. Before I sold it to my mother?

Q. Yes. A. Yes, sir.

(Testimony of William J. White.)

Q. To whom? [455—125]

A. I offered to sell it to Nat. Brown, of the Clear-water Timber Company.

Q. And is he the only one that you ever offered to sell it to that you can remember?

A. Well, I don't remember distinctly whether I offered to sell it to Mr. Kettenbach or not, but I think I mentioned some of the facts, and I think he said he didn't want it; he wasn't buying any claims.

Q. Did you have any agent or anybody authorized to sell this claim for you? A. No, sir.

Q. Not at any time? A. No, sir.

Q. I understood you to say those claims were sold for \$4,000.00 a piece? A. Yes, sir.

Q. You got \$16,000.00 for the four claims?

A. Yes, sir.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of William J. White, dated April 25th, 1904, the Nonmineral Affidavit of William J. White, bearing the same date, the notice for publication of William J. White, also of the same date, the testimony of William J. White given on final proof, dated July 14th, 1904, the cross-examination of Mr. White concerning the same, the testimony of the witnesses who appeared at the final proof, the Receiver's Receipt, the Register's Certificate, dated July 14th, 1904, a certified copy of the patent issued to William J. White, dated the 31st of December, 1904; all of said papers relating to the entry of William J. White, of the south half of the north half of section 14, township 38 north, of range

(Testimony of William J. White.)

5 east of the Boise meridian.

Mr. TANNAHILL.—The defendants waive any further identification of the papers, but severally object to all of the papers offered as the same relates to bill 388 and 407, on the ground that the entry is not [456—126] referred to or described under these two actions, and they are irrelevant and immaterial. And the defendants also severally object to the introduction of any of the documents in evidence, upon the ground that it affirmatively appears that the entry was made in good faith, without any agreement to convey the same to any of the defendants, and that the entry is valid and should not be canceled. The defendants also severally object to the introduction in evidence of all of the final proof papers, upon the ground that they are irrelevant, incompetent and immaterial for any purpose.

Said files were thereupon marked by the Reporter, Exhibits 5, 5A, 5B, 5C, 5D, 5E, 5F, 5G, 5H, 5I, 5J, 5K, 5L, and 5M.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. White, at the time you made your entry had you any agreement, either directly or indirectly, with any person or persons or corporation, whereby you should convey the land to them?     A. No.

Q. I will ask you if the affidavit you signed, contained in your sworn statement, in substance that “I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it



(Testimony of William J. White.)

to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," was that statement true when you made it?      A. Yes, sir.

Q. And it is still true, is it?      A. Yes, sir.  
[457—127]

Redirect Examination.

(By Mr. GORDON.)

Q. One question I forgot to ask you, Mr. White: Did you have the money with which to purchase this claim at the time that you went to the land office, of your own; or did you borrow it from someone?

A. I think I borrowed it from my mother.

Q. From your mother?      A. Yes, sir.

Q. And you borrowed enough for your own claim and for your wife's claim, too?

A. In making our proof?

Q. Yes.

A. No. I think that I had that money myself.

Q. Now, I don't quite understand you. What did you borrow?

A. Well, at the time I bought this fourth claim—

Q. No—I mean when you made your proof?

A. Oh, did I borrow the money then?

Q. Yes.

A. I don't think I did; I think that I had it myself.

(Testimony of William J. White.)

Q. Well, haven't you any distinct recollection of that?

A. Yes, I think I had this money myself. I could easily find out. It has been quite a long while ago, and I don't remember all the details of it.

Q. Well, did you bank anywhere except at the Lewiston National Bank? A. In Lewiston?

Q. Any place, at that time? A. No, sir.

Q. And have you a distinct recollection of getting the money from that bank when you went to the land office to make your proof? A. Yes, sir. [458—128]

Q. Now, do you remember—

A. I must have done.

Q. Do you remember whether you got it on your check, or whether you borrowed it from someone?

A. Why, I simply gave my check, and it was charged to my account. [459—129]

**[Testimony of Soren Hansen, for Complainant.]**

SOREN HANSEN, a witness called on behalf of the complainant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Soren Hansen? A. Yes, sir.

Q. Where do you reside, Mr. Hansen?

A. Up above Peck, Idaho.

Q. How long have you resided in Idaho?

A. About ten or eleven years.

Q. And how long have you resided in Peck and vicinity? A. Four years.

(Testimony of Soren Hansen.)

Q. Where did you reside in February, 1903?

A. Up here above Lewiston about three miles, three or four miles.

Q. Mr. Hansen, I didn't catch your last answer.

A. Up above Lewiston here about three miles and a half or four miles.

Q. Did you have a ranch there?

A. I had a ranch rented.

Q. Rented?      A. Yes.

Q. Did you own any real estate at that time?

A. No, I think not. Well, I might have owned a couple of lots here in town; I don't recollect whether I bought them before that or afterwards.

Q. How large a ranch did you have rented?

A. Why, I don't recollect. I rented different years; some years I had as high as seven hundred acres.

Q. Well, I mean in 1903.

A. Yes. Well, I couldn't remember how much I had that year, because I changed every year; some years I had more, and I have no memorandum or no recollection of how much I had that year, but I had approximately three or four hundred acres. [460—130]

Q. Did you work it on shares?

A. Some I worked on shares and some for cash rent.

Q. I am speaking now about this ranch you had in February, 1903, at the time that you made the timber and stone entry.

A. That is what I can't remember; I don't remem-



(Testimony of Soren Hansen.)

ber now whether I had a ranch rented, the Grooston place, but I can't remember now whether I had that that year. I paid cash for that, and that was four hundred and sixty acres, but whether that was in 1903 or whether I had left that before that or not I can't remember.

Q. You say you paid cash for it. You mean you paid cash rent for it?

A. Yes, I paid cash rent for the Grooston place, four hundred and sixty acres.

Q. You spoke of some town lots you had?

A. Yes, I have got a couple of lots up here in town.

Q. Did you have them in 1903?

A. That is what I can't remember either, whether I had them or not.

Q. Do you remember what you paid for those lots?

A. Yes, I paid \$700.00 for them.

Q. For the two of them? A. Yes.

Q. Did you pay cash for them, or did you borrow the money? A. Yes, I paid cash for those.

Q. I show you timber and stone land sworn statement of Soren Hansen, dated February 26, 1903, and ask you if that is your signature to the sworn statement, and whether you filed it in the land office about the date it bears. A. That is my signature.

Q. I show you nonmineral affidavit of Soren Hansen of the same date and ask you if that is your signature to that? A. Yes, that is my signature.  
[461—131]

Q. I show you affidavit made by Soren Hansen before Charles H. Garby, receiver of the land office,

(Testimony of Soren Hansen.)

dated May 26, 1903. Is that your signature?

A. Yes, sir.

Q. I show you the testimony of Soren Hansen, given on final proof, dated June 5, 1903, and ask you if that is your signature? A. Yes, sir.

Q. That is your signature to the cross-examination taken at the same time? A. Yes, sir.

Q. I show you a deed, Mr. Hansen, made and executed by Soren Hansen and Anna K. Hansen, his wife, dated February 17, 1906, grantee blank, consideration \$1.00, to the southeast quarter of section 10, township 39 north of range 3 east, Boise meridian, acknowledged before Charles L. MacDonald, a notary public for Nez Perce County, Idaho, February 17, 1906, and ask you if you signed and acknowledged that deed? A. Yes, sir.

Q. And that is your wife's signature, is it?

A. Yes, sir.

Q. And she acknowledged it at the same time?

A. Yes.

Q. I show you a deed dated May 16, 1908, by Soren Hansen and Anna K. Hansen, to E. W. Thatcher, consideration \$1157.50, conveying the southeast quarter of section 10, township 39 north of range 3 east, Boise meridian. Is that your signature, Mr. Hansen, to that deed? A. Yes.

Q. And that is the signature of your wife to that deed? A. Yes, sir.

Q. And you both acknowledged it May 16, 1908, before Orin Walker, a notary public of Peck, Idaho.

A. Yes, sir.



(Testimony of Soren Hansen.)

Q. I show you another deed, Mr. Hansen, dated March 5, 1909, made by Soren Hansen and Anna K. Hansen, his wife, of Peck, Idaho, [462—132] conveying to William F. Kettenbach, for a consideration of \$1.00, the southeast quarter of section 10, township 39 north of range 3 east, Boise meridian, signed Soren Hansen, Anna K. Hansen, and acknowledged May 15, 1909, before Orin Walker, notary public for Nez Perce County, and ask you if that is your signature to the deed I have just referred to?     A. Yes, sir.

Q. That is the signature of your wife?

A. Yes, sir.

Q. And you both acknowledged it on the date set out in the body of the acknowledgment?

A. Yes, sir.

Q. Before Mr. Walker?     A. Yes, sir.

Q. Mr. Hansen, what induced you to take up a timber claim?

Mr. TANNAHILL.—We object to any evidence of the witness in relation to taking up any timber claims in so far as they relate to bills and actions numbers 388 and 407, for the reason that the entry is not referred to in these particular actions, and they are wholly irrelevant, incompetent and immaterial.

A. Why, Clarence Robnett.

Mr. GORDON.—Q. Mr. Hansen, state what Mr. Robnett said to you that induced you to take up a timber claim.

A. Why, I met him one day on the street, and he



(Testimony of Soren Hansen.)

says, "Don't you want to take a timber claim, George?" And I said no. I told him I didn't want no timber claim, I didn't have time to go after it, I didn't have the money to spare, I didn't want to put money into a timber claim. And he said he would tend to the whole matter and that it wasn't necessary for me to go up there.

Q. What did he say about the money?

A. Why, he said he could furnish the money, or get the money for me, whichever it was. [463—133]

Q. And now were you to get anything out of that timber claim, or how was that? Was anything said at that time about that?

A. Why, I asked him what there was in it, and he said, "I ought to be able to get you from three to five hundred dollars out of the place."

Q. How were you to get the three to five hundred dollars out of it?

A. Why, when he sold it. He said he would be able to sell it, he had more claims, and he would be able to sell it for me.

Q. And you were to get three or five hundred dollars out of it? A. Yes.

Q. I don't know whether I asked you this: You are sometimes known as George Hansen, aren't you, Mr. Hansen?

A. Yes. That is really my name; it is George Soren Hansen, that is my name; but the way I come to go by Soren Hansen in any legal matters is, when I took out my naturalization papers they didn't get George in, and anything with reference to deeds

(Testimony of Soren Hansen.)

or anything, or a Government matter, that is all the name I can use.

Q. Well, what happened next with reference to taking up a timber claim? Did you tell Mr. Robnett that you would agree to that, or what did you do?

Mr. TANNAHILL.—We object to it as leading and suggestive.

A. Well, I said I thought it would be all right, if he could tend to it for me, if I didn't have to go after it, and didn't have to furnish the money, why, to go ahead.

Q. And when did you see him next, or after that?

A. Why, some time afterwards; I don't recollect the length of time. But I met him on the street again one day, and he said, "I have got a claim for you now, and you can go in and file."

Q. What? A. Go in and file on it.

Q. Well, did you go and file? Just tell what happened.

A. Well, I can't,—I don't know now whether I filed that day or not. It is a long time ago, and I can't tell; I don't recollect the [464—134] transaction just as it transpired at the time.

Q. Do you know where this land upon which you filed is situated?

A. It was out in the Clearwater mountains somewhere.

Q. Have you ever seen it? A. No.

Q. Did you ever go anywhere to look at it, with the view of seeing it? A. No.

(Testimony of Soren Hansen.)

Q. Nobody took you over the land or pretended to take you over the land?

A. No, we couldn't get in there at the time, he said; there was snow—

Q. I will ask you whether or not you ever had any intention of going there to look at it?

Mr. TANNAHILL.—I object to it as irrelevant and immaterial, and he wasn't required to go there and look at it, by law.

A. If there had been somebody to go with me, and we could have went at the time, I would have went, but he said we couldn't get in there.

Q. What explanation did he give?

A. Clarence told me it wasn't necessary to go and look at the land.

Q. Did he tell you why it wasn't necessary?

A. No, I couldn't say whether he did or not. I don't recollect why he explained any reason why, only he said it wasn't necessary.

Q. What brought up the conversation as to whether it was necessary to go and view the land?

Mr. TANNAHILL.—We object to it as irrelevant and immaterial. And our same objection goes to all of this line of evidence.

Q. Did Mr. Robnett go to the land office with you?

A. No. Yes, he did. He went to the land office with me, but he wasn't there when I filed.

Q. This sworn statement that I have shown you, I will ask you [465—135] whether or not he had that prepared for you? A. He had what?

Q. That sworn statement, the first paper you filed



(Testimony of Soren Hansen.)

in the land office.

A. Yes, he went,—well, he went with me to some attorney's office and had that drawed up.

Q. Do you remember the name of the attorney?

A. No, I don't. I didn't know the man, and I don't remember his name; I don't know as I found out at the time.

Q. Then you went to the land office and filed it?

A. Yes.

Q. And were you notified of the time to make final proof? Of the purchase of the land?

A. Notified at the time when I made filings?

Q. Did anyone notify you when you should go to the land office and pay for this timber?

A. Well, I don't recollect whether they did or not.

Q. Do you know how you knew when to go to the land office?

A. Why, I suppose somebody, someone told me at the time, or some time afterwards, but I don't recollect.

Q. And do you remember going to the land office and making your proof?

A. Yes, I remember going to the land office.

Q. Do you remember how much you paid at the land office at that time?      A. No, I don't.

Q. Have you an idea how much it was?

A. Why, I think it was \$7.00 or \$8.00, but I don't—you mean for filing fee?

Q. No, I mean when you purchased the land, when you paid for the land.

A. I think it was something about \$400.00.

(Testimony of Soren Hansen.)

Q. Where did you get the \$400.00? [466—136]

A. Why, Clarence Robnett furnished the money.

Q. Then you went to the land office with him, or did you go alone?

A. No, he didn't go with me when I filed. He went up with me to Mullen's office, I think, and had some papers drawn up, but I don't recollect what it was about now.

Q. I am speaking of the time when you paid the \$400.00 at the land office. Did he go to the land office with you then?

A. No, he wasn't in the land office when I paid the money, no.

Q. Where did he give you the \$400.00?

A. Down in the bank?

Q. Which bank?

A. The Lewiston National Bank.

Q. Did you have an account in the Lewiston National Bank. A. No.

Q. Never did?

A. I did not. I used to have, but I didn't at the time.

Q. And did you give any note to secure that money that you got from Mr. Robnett?

A. Yes, I gave a note at the time.

Q. Did you give it before you got the money, or afterwards?

A. Well, now, that I couldn't remember that; I can't say whether it was before or after or at the time.

Q. And when you paid that money into the land

(Testimony of Soren Hansen.)

office they gave you a receiver's receipt for it, did they?

A. I suppose they did, but I don't—

Q. Do you know what you did with that?

A. No, I don't; I don't remember much of the transaction there, it is so long ago.

Q. Now, do you remember how much this note that you gave Mr. Robnett was for?

A. No, I don't know whether that was for \$600.00 or for \$400.00; I don't recollect.

Q. Did you have to pay a bonus for getting that money?     A. Yes, I paid \$200.00. [467—137]

Q. And do you know how long that note was to run?     A. No, I don't.

Q. You don't remember whether there was any statement or arrangement made as to how long the note was to run or not when you made it?

A. No, I couldn't say.

Q. Well, now, state what the occasion was of your making the deed that you identified, dated February, 1906, in which there is no grantee?

A. Why, Clarence he came to me one day and says, "I got a chance to sell that timber claim for you, and if you will make out a deed to it, why I will, I can turn it over to them whenever it is sold, and I won't have to call on you." So I made out the deed.

Q. Was anything said at that time about what the purchase price of the land should be?

A. Well, now, I couldn't tell whether there was or not.

Q. Now, you delivered that deed to Mr. Robnett,



(Testimony of Soren Hansen.)

did you?      A. Yes, sir.

Q. Now, the next deed you identified, dated May 16, 1908, running from Soren Hansen and wife to E. W. Thatcher, do you remember the circumstance of making that deed?

A. Yes, he wrote up to me, he sent the deed, it was already filled up, sent it up to me, and wrote to me to fill it out and have it proved, prove it before a notary public and have it signed and acknowledged and sent down to him.

Q. Have you that letter?      A. No, I haven't.

Q. Do you know what became of it?

A. I don't know; I might have it at home, but—

Q. Do you know whether there was anything said as to the consideration for which the property was to be sold then, or was it silent as to that?

Mr. TANNAHILL.—We object to it as immaterial, and not the best evidence. [468—138]

A. I couldn't say whether he said anything about that at the time or not in the letter.

Mr. GORDON.—Q. Now, the third deed that you identified, dated March 5, 1909, running to William F. Kettenbach, what was the circumstance of your executing that deed?

A. Why, that is after,—I didn't send that other deed down to Robnett. I went down myself, and me and my wife to Lewiston, so I just took it in and handed it to him and he says,—well, I don't remember what his explanation was, but anyway he wanted another deed instead of the one I made out for Thatcher, he wanted another one, and so he had an-

(Testimony of Soren Hansen.)

other deed there, and he sent a notary public up to my wife's; she was up to her mother's house,—and had her acknowledge that other deed, and I kept the first deed to Thatcher.

Q. Now, do you remember to whom that deed ran?

A. The second deed?

Q. The one you have just referred to.

A. Yes, that was to the Clearwater Timber Company.

Q. When was that? After you had executed the other three deeds?

A. The other two, the deed in blank and the deed to Thatcher.

Q. And you executed another deed before you did this one to Mr. Kettenbach, is that right?

A. Yes, sir, to the Clearwater Timber Company.

Q. And was that the one you say that you executed down here at Lewiston? A. Yes, sir.

Q. And you say Mr. Robnett attended to that for you? A. Yes, sir.

Q. And then he sent this deed to William F. Kettenbach to you, as I understand?

A. Yes, he wrote to me afterwards again and told me there was a—I forget now whether it was a mistake,—but anyway he wanted another deed. [469—139]

Q. And that was the one? He sent this one to Kettenbach up to you?

A. Yes, he sent that up to me.

Q. Did Mr. Robnett give you any money at any time that you executed any of the deeds?



(Testimony of Soren Hansen.)

A. When I executed that deed to Mrs. Thatcher he gave me \$60.00.

Q. Was that all you ever got out of it?

A. That was all I ever got out of it. He said that would be the amount it would take to foreclose, and he said he couldn't get me any more out of it.

Q. And did you ever have any conversation as to why you didn't get the three or five hundred dollars that was promised you in the beginning?

A. Yes, I spoke to him about that, and he said that was all,—the timber deal was all—you couldn't sell timber, and that was all they could possibly get out of it.

Q. Mr. Hansen, I will ask you whether or not you would have taken up this claim if it hadn't been for the arrangement you made with Robnett the first time that you talked with him about it?

A. No, I would never have taken up any land if it hadn't been for him, that is, no timber land at that time or at that place.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Soren Hansen, dated February 26, 1903; notice of publication of Soren Hansen of the same date; nonmineral affidavit of Soren Hansen of the same date; the testimony of Soren Hansen on final proof, dated June 5, 1903; and the cross-examination thereof; the receiver's receipt and the register's certificate, dated June 5, 1903; certified copy of the patent issued to Soren Hansen, dated August 3, 1904; the testimony of the witnesses on final proof, and the cross-examination



(Testimony of Soren Hansen.)

thereof; and the other files of the land office in Soren Hansen's entry, all the said papers relating to the entry, and being a portion of the entry of Soren Hansen to the southeast quarter of section 10, township 39 north of range 3 east, Boise meridian. We also offer in [470—140] evidence the three deeds identified by the witness Hansen, dated February 17, 1906, May 16, 1908, and March 5, 1909, respectively.

The above exhibits were thereupon marked 6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H, 6I, 6J, 6K, 6L, 6M, 6N, 6O, 6P, 6Q, 6R, 6S, 6T, and 6U.

Mr. TANNAHILL.—The defendants severally object to all of the documents in so far as they relate to bills number 388 and 407, upon the ground that they are irrelevant, incompetent and immaterial. And the defendants severally object to the introduction in evidence of the final proof papers in the offer, the affidavit of Soren Hansen, affidavit of publication, testimony of the witness Edward Knight, cross-examination of the witness Edward Knight, testimony of the witness William B. Benton, cross-examination of the witness William B. Benton, testimony of Soren Hansen, cross-examination of the witness Soren Hansen, upon the ground that they are incompetent, irrelevant and immaterial, and do not tend to prove or disprove any of the issues in the case. The defendants severally waive any further identification of the papers offered.

Mr. GORDON.—Take the witness.

(Testimony of Soren Hansen.)

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Hansen, I do not know that I understood your statement relative to your first conversation with Mr. Robnett relative to your taking up a claim. Will you repeat the conversation you had with him?

A. Why, he met me on the street and asked me if I didn't want to take up a timber claim, and I told him no, I didn't have time to go after it, and I didn't have the money, I didn't want to spend the money to pay for it, and he told me he would tend to the matter and furnish the money.

Q. When did you have your next conversation with him?

A. Why, I couldn't tell the time, the lap between the two conversations. I met him on the street one day, but as to the length of time, I don't recollect.  
[471—141]

Q. Well, where he said that he would sell the claim for you, that he had some other claims, and that you ought to get \$350.00 out of it. What was that conversation?

A. That was the first time, when I first spoke about it.

Q. Well, then, give us all of that conversation, Mr. Hansen.

A. Well, I asked him what I can get out of it, and he said I ought to be able to get from three to five hundred dollars out of it when I sell it.

Q. When you sold? A. Yes.

Q. Now, what else did he say about it?



(Testimony of Soren Hansen.)

A. Why, that is impossible for me to repeat all of the conversation, or whether there was any more conversation or not; I couldn't tell.

Q. I understood you to say that he told you that he would look after the selling of it for you, that he had some more claims?

A. Yes, he said he had more claims out there, and he would take charge and sell the claim.

Q. Then you had no particular agreement to sell it to him?

A. Oh, no, there was no particular—

Q. And you had no agreement to sell it to anyone else in particular?

A. There was no agreement, no, to sell to anyone, only he said he could sell it for me.

Q. I see. That was after you got title?

A. Yes.

Q. Then your affidavit that you made—

Mr. GORDON.—Let me interrupt you there. Your statement that it was after he had title wasn't intended to mean that the conversation was after that, but to sell after he got title?

Mr. TANNAHILL.—No; to sell after he got title.

Q. This affidavit that you made in connection with your sworn statement, "That I have made no other application under said acts"; that was true, wasn't it? You had made no other application, had you?  
[472—142]      A. No.

Q. "That I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit,



(Testimony of Soren Hansen.)

and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself, and that my postoffice address is Lewiston, Nez Perce County, Idaho." Your affidavit in that respect was true, was it, Mr. Hansen?

A. Yes, it was true, to the extent, unless I told him he could sell it for me, or he told me he could sell it for me, unless that infringed on that,—I am not—

Q. Well, you didn't consider that you had made a contract to sell it to anyone else at the time you made your filing?

A. No, I didn't make a contract to sell it.

Q. Of course, you understand that when anyone takes up a timber claim, he takes it up with the intention of selling it and making some money out of it, when he gets title to it?

A. That was my intention.

Q. And you expected to apply the money to your own exclusive use and benefit?      A. Yes, sir.

Q. And you didn't take it up for the purpose of giving to anyone else the benefit of it?

A. No.

Q. You never had any conversation with Mr. Dwyer or Mr. Kester or Mr. Kettenbach regarding it, did you?      A. Never.

Q. You didn't take it up for either of those gentlemen?      A. No, sir.

(Testimony of Soren Hansen.)

Q. And you had no understanding or agreement with them? A. Not a word. [473—143]

Q. And you had tried repeatedly to sell this claim, had you not, Mr. Hansen? A. Sir?

Q. You had tried repeatedly to sell this claim, had you not, after you acquired title to it?

A. No, I never tried to sell it myself, and I didn't have,—there was no buyer came to me, for one thing.

Q. You had Mr. Robnett try to sell it for you frequently?

A. Mr. Robnett was tending to it; I suppose he was trying to sell it when he had the chance.

Q. Mr. Robnett had tried to sell it to E. W. Thatcher, Mrs. Thatcher, had he, to whom you made this first deed?

A. I suppose; he sent me that deed.

Q. He had also tried to sell it to the Clearwater Timber Company, and you had made out a deed in favor of the Clearwater Timber Company?

A. Yes, I had those changed.

Q. And he had tried to sell it to William F. Kettenbach, and you made out a deed to him?

A. Yes.

Q. Who did you finally sell it to?

A. That is as near as I come to selling it yet; I am holding those deeds.

Q. And you haven't actually conveyed it to anyone?

A. Well, I don't know; there is a deed out for the Clearwater Timber Company. I suppose that is—

Q. You sold it to the Clearwater Timber Company?

(Testimony of Soren Hansen.)

A. That deed I never got back. That is the reason I hold the last deed. I wouldn't deliver this last deed to Mr. Kettenbach before I got the other deed back to the Clearwater Timber Company.

Q. And you never delivered this deed to William F. Kettenbach? A. No.

Q. You had, before that, delivered a deed to the Clearwater Timber Company? [474—144]

A. I delivered it to Clarence Robnett.

Q. Do you know what he did with it?

A. No, I don't.

Q. When was it that you got the \$60.00?

A. That was when I delivered the deed to Thatcher, to Mrs. Thatcher.

Q. He gave you the \$60.00 then? A. Yes.

Q. Did you get any more money when you delivered the deed in favor of the Clearwater Timber Company? A. No, that was all the money I got.

Q. Who was it that gave you the \$60.00?

A. Mr. Robnett.

Q. What did he tell you about it when he gave it to you?

A. He said that was all he could get out of it.

Q. What else did he tell you?

A. Why, I don't recollect; he said something about there was no sale for timber land, or—

Q. And it wasn't a first-class claim, was it?

A. Well, I couldn't tell.

Q. You couldn't say? You don't know anything about that?

A. I don't know anything about that.



(Testimony of Soren Hansen.)

Q. And you never had any negotiations or communication with any officer of the Clearwater Timber Company, did you?

A. No, sir, never saw them.

Q. You had no prior agreement, no agreement to sell it to the Clearwater Company before you made your final proof?      A. No, sir.

Mr. TANNAHILL.—That is all.

Mr. GORDON.—That is all, Mr. Hansen.

An adjournment was thereupon taken until two o'clock P. M. [475—145]

At two o'clock P. M. the hearing was resumed.

**[Testimony of William McMillan, for Complainant.]**

WILLIAM McMILLAN, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is William McMillan?

A. Yes, sir.

Q. Can you speak a little louder?

A. Yes, that is my name.

Q. Where do you reside, Mr. McMillan?

A. I reside in the Orofino country—about eight miles from Orofino.

Q. How long have you resided at Orofino?

A. I have resided up there about 27 years.

Q. What was your occupation in the spring of 1904?

A. I ranched a little, and carrying the mail.

Q. Do you remember taking up a claim under the

(Testimony of William McMillan.)

timber and stone act?      A. Yes.

Q. I show you timber and stone lands sworn statement, dated April 25th, 1904, signed by William McMillan by his mark, and ask you whether you remember signing that paper in that fashion and filing it in the land office on or about the date it bears?

A. Yes. I didn't have no glasses that day and I couldn't see to write my name, and I think Mr. West signed them for me. That is my mark.

Q. And the nonmineral affidavit of the same date, signed William McMillan, you signed that by a mark at the same time, did you?

A. Is there a mark on that?

Q. Yes. [476—146]

A. Well, I guess it was. I think there was two papers at the same time.

Q. I show you the testimony of William McMillan taken on final proof July 18th, 1904, and the cross-examination of William McMillan at the same time, and ask you if that is your signature to both of those papers?      A. I think it is.

Q. Mr. McMillan, who first spoke with you about taking up a claim under the timber and stone act?

Mr. TANNAHILL.—We object to any evidence in relation to the taking up of a claim to be given by this witness in support of bill 388 and 407, upon the ground that it is wholly irrelevant, incompetent and immaterial, his entry not being involved in either of these actions.

The SPECIAL EXAMINER.—Now, just read the question to Mr. McMillan, and Mr. McMillan just



(Testimony of William McMillan.)

put your chair up a little and let your foot go down there, and now speak just about as loud as you can to the Reporter there. Your voice seems to be rather low, and that gentleman there has got to get the testimony down.

WITNESS.—Yes. All right.

The Reporter thereupon repeated the last question.

WITNESS.—It is right for me to answer the question?

Mr. GORDON.—Yes, sir.

A. Well, George Kester.

Q. George H. Kester? A. Yes, sir.

Q. Where was that conversation had?

A. It was in my cabin—my house.

Q. Well, what was Mr. Kester's business there at that time?

A. Well, his business, he was up in the upper country some way, and he was well acquainted with me, and he was up in there and it was a nigh cut across that way to Orofino, and he rode past there and called in to see me. [477—147]

Q. When was this conversation?

A. It was in October, 1904, I think.

Q. Was it before you entered your claim?

A. Yes, before I entered the claim.

Q. How long before you entered your claim?

A. Well, it must have been from October to April.

Q. Now, what did Mr. Kester say?

A. Why, he asked me something about whether I had used my right for a timber claim, and wasn't I going to take one, and I told him I hadn't.



(Testimony of William McMillan.)

I didn't know anything about timber claims at that time. I told him I hadn't, and told him that I didn't have money enough to take one without mortgaging my place, and I told him I wouldn't do that, and so he said if I took a notion to take one if I needed a little money he would help me out, which he did. I had part of the money, but I didn't have enough.

Q. Did you see him again or talk with him again before you filed on your claim?

A. No, I didn't. I never seen him till after I had filed on my claim.

Q. Well, you went to view the land, did you?

A. Yes, I went up after that.

Q. How long after that conversation?

A. Oh, about a week or so. There was a little bad weather.

Q. Did anyone give you any instructions as to what you should do, as to how to get a claim?

A. No, I don't think they did.

Q. Well, did you know whether or not you had to have a locator go over the land with you, or was anything said about that by anyone?

A. Well, I knew that; I knew that, according to regulations, and I knew there had been a good many locating at that time.

Q. And did you arrange for someone to locate you on this land? A. Well, yes, I did. [478—148]

Q. Well, with whom did you make the arrangements? A. I made the arrangements with Dwyer.

Q. Did you know Dwyer?

(Testimony of William McMillan.)

A. Why, not particularly; I had seen him; I heard he was a locator.

Q. And in this first conversation with Mr. Kester, was there anything further said with reference to taking up this claim besides that he would help you out? A. No.

Q. Or furnish you the money?

A. No, nothing particular.

Q. Well, was there anything said about what you were to do with the claim?

A. No, nothing particular at all, whatever, that I remember of.

Q. Was there anything said to you about the value of the claim?

A. No; but he told me I would be safe enough in taking one, if I could raise the money to prove up; it would come in the market pretty soon. There wasn't any timber claims hardly selling at that time.

Q. Did he tell you that he would insure you so much money over and above expenses?

Mr. TANNAHILL.—We object to that as leading.

WITNESS.—Well, he said I would be safe enough; that I could make \$100.00 or \$150.00 for it anyhow—safe enough to take one.

Mr. GORDON.—Q. Now, how did he express that?

A. Why, he said that I would be safe enough, you know; something to that effect; I couldn't just tell you word for word now.

Q. Well, what was that about the \$100.00 or the \$150.00?



(Testimony of William McMillan.)

A. Well, that he was pretty sure I could make that much out of it above expenses, and I was well satisfied with that at that time, if I could make that much. I didn't know whether I could make it or not. I was pretty sure I could make that, or he wouldn't have told me I [479—149] could make that much.

Q. Did you know of anyone at that time that was buying claims?

A. No, I didn't. I knowed some of them had claims that couldn't sell them.

Q. Did you have any understanding or agreement with Mr. Kettenbach, or Mr. Kester, when you first talked with him, as to whether you were to turn that claim over to him? A. I did not.

Q. Or to anyone he told you to?

A. I didn't have any agreement.

Q. Did you have an understanding?

A. Well, no, I don't know that I had any understanding. I understood that I could turn it over to him if I had a mind to, but I could turn it over to anybody else. I wasn't forced to turn it over to him.

Q. Well, was it your understanding when he made the agreement with you that he would furnish you the money, that you would turn it over to him?

A. No, there was no such agreement as that at all.

Q. What's that?

A. No, I didn't make any such agreement as that at all, whatever.

Q. Well, what did you expect to do with that claim when you took it up?

A. I expected to sell it as soon as I could and get



(Testimony of William McMillan.)

what I could out of it.

Q. And who did you expect to sell it to?

A. Well, I expected to sell it to whoever would buy it. Of course, he told me about it, and I would give him the preference.

Q. But that is what you expected to do when you had your first talk with him and when you came to the conclusion that you would take it up?

[480—150]

A. When I had my first talk with him I didn't have much idea, and I thought it over for a day or two, and then I thought I would.

Q. I asked you who located you on this timber claim. A. A man by the name of Bliss.

Q. Was Mr. Dwyer with you and go over the claim with you?

A. No. Bliss was working for him, and he sent him in his place.

Q. Mr. Dwyer introduced you to Mr. Bliss?

A. Yes. I seen him in Pierce City and Orofino, and I knew him.

Q. Then you waited for six or seven months after you went over the land before you came down to file?

A. Yes.

Q. Who notified you of the time to come to the land office to file?

A. Why, nobody notified me. I could see that in the papers when the land came into market.

Q. Well, it wasn't open to entry, then, is that correct? A. No, it wasn't open to entry till April.

Q. And you filed on this land the day that the land

(Testimony of William McMillan.)

was open to entry, did you?

A. No; I was two or three days late on it. I wasn't here to the day.

Q. You wasn't here the first day?

A. I think it was the first of April, or the third of April, and I went on up on the 5th or 6th.

Q. It was the 25th? A. Of April?

Q. Yes.

A. Well, I was thinking it was the first. I don't remember, then.

Q. Did you have to stand in the line?

A. No, I wasn't in any line.

Q. Do you remember of paying a filing fee in the land office? [481—151] A. Yes.

Q. Do you remember how much that was?

A. I can't remember very well—somewhere about \$15.00.

Q. Do you remember who prepared this sworn statement for you, or the first papers you filed in the land office, which you have identified here?

A. No, I don't know whether I do or not. I can't remember now.

Q. Do you remember where you received those papers?

A. I think it was—I think a man named Cox, I think.

Q. A lawyer?

A. Yes. I think it is him, if I ain't mistaken. It is so long ago I forget.

Q. Had Mr. Cox done any legal work for you before? A. No.

(Testimony of William McMillan.)

Q. Do you know how you happened to go to see Mr. Cox?

A. Well, there was lawyers here then, and about that time they were all busy, and I went to the one that wasn't busy.

Q. Did anyone suggest your going to Mr. Cox?

A. Yes. I don't recollect now who it was. I asked somebody there in the land office where I could get them made out, and they told me where to go.

Q. Did you see Mr. George Kester the day that you made your filing in the land office?

A. I think I did after I had filed; I didn't see him before that.

Q. You saw him the same day?

A. I think I saw him the same day.

Q. And did you talk about this claim then?

A. I don't recollect whether I did or not.

Q. Did you have any further conversation about getting the money to make proof and purchase the land?     A. No, I didn't.

Q. Then several months after that you went to the land office [482—152] again, to make your final proof?     A. Yes.

Q. Do you remember whether or not you saw Mr. Kester then, before you made your final proof?

A. Yes, I seen him.

Q. Where did you see him?

A. I seen him at the bank where he worked at the time.

Q. Right in the bank?     A. Yes.

Q. And what was your conversation with him then



(Testimony of William McMillan.)

relative to this claim?

A. Why, nothing more than I told him, I says to him I had taken a claim and I haven't got money enough, and he says, "I will help you out," and he wanted to know how much it was, and I told him how much I wanted. In fact, he told me when I first seen him that he would help me out, and he didn't go back on his word.

Q. Now, do you know how much you got on that occasion? A. I don't recollect now.

Q. Do you remember approximately how much it was?

A. I think I got about \$300.00, something like that. I had something over \$100.00 of my own. It took \$400.00 to prove up on, and I had something over \$100.00.

Q. Was that the same day that you made your proof? A. Which?

Q. That you got the money from Mr. Kester?

A. Yes. I came in on the train and proved up the same day.

Q. And did you give Mr. Kester a note?

A. I did not. He didn't ask for any.

Q. You say you didn't, and he didn't ask for one?

A. No.

Q. And you didn't pay him any interest?

A. No. [483—153]

Q. And was there any arrangement or agreement as to when you should repay him the money you got from him?

A. No. Well, I don't know; when I sold him the

(Testimony of William McMillan.)

timber claim I would pay him the money.

Q. Was anything said between you and Mr. Kester at that time as to where you should say you received the money with which to purchase that claim, when that question would be asked in the land office?

A. I don't think there was. I don't think he said anything, no.

Q. You remember going to the land office and being asked some questions when you made your final proof, don't you? A. Yes.

Q. Do you remember this question being asked you on cross-examination when you made your proof: "Question No. 16. Did you pay out of your own individual funds all the expenses in connection with making this filing, and do you expect to pay for the land with your own money," and that you answered "Yes"?

Mr. TANNAHILL.—The defendants severally object to the question, and object to any and all evidence in relation to the final proof, upon the ground that it is irrelevant, incompetent and immaterial.

WITNESS.—Yes. What did I answer?

Mr. GORDON.—You answered "Yes" here, and I asked you if you made it, and you answered yes.

A. Well, give me the question again.

The SPECIAL EXAMINER.—Well, let the stenographer read the question over.

The stenographer thereupon repeated the said question and the answer thereto.

WITNESS.—I answered that yes. I considered that my own money.

(Testimony of William McMillan.)

Mr. GORDON.—Q. The next question, No. 17. “Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?” and the answer is: “Saved it from my earnings. [484—154] Six months.” Do you remember that question being asked you, and that answer being made by you?

A. Yes. Well, I had saved part of it from my earnings, and the rest was my earnings, too. I earned that money right at that timber claim.

Q. And that you had had the same in your actual possession for six months?

A. Well, I didn't have the whole of it in my possession six months—not all of it—I had part of it. I don't think they asked me that question.

Q. Now, how long after you made that proof did you sell this land? A. Two years.

Q. And who did you negotiate with for the sale of it? A. I sold it to Dwyer.

Q. William Dwyer? A. Yes.

Q. Now, who did you have the negotiations with, though? A. What do you mean by that?

Q. Who did you talk with about selling it?

A. I talked with Dwyer. The way I understood he was doing business with Kester, because I seen Kester, and Kester told me whatever business I done with Dwyer was all right with him and the money. Of course, he would have to get that money back when I sold the claim.

Q. Before selling to Dwyer, though, you went to see Mr. Kester about it, is that right?



(Testimony of William McMillan.)

A. Yes, I seen him, yes.

Q. And what did you say to Mr. Kester about the claim at that time?

A. I don't remember what I said. I don't remember.

Q. Well, did you ask him whether or not you could sell it to Dwyer, or anybody else? [485—155]

A. Oh, yes, I understood that, but I could sell it to him; yes.

Q. Well, what did you say to Kester about that?

A. Well, I asked Kester if it was all right, and he said yes.

Q. And do you remember how much Mr. Dwyer paid you for that claim?

A. I don't just recollect now. The whole thing was counted up, what it cost me, and he gave me so much over.

Q. How much did he give you?

A. He gave me \$200.00.

Q. Is that all you got?

A. I got all my expenses and money to pay for proving up and everything.

Q. Now, let me see. Did Mr. Dwyer advance you any money? A. At that time?

Q. Yes? A. No.

Q. And had you borrowed any money from Mr. Dwyer? A. No.

Q. And you sold to Mr. Dwyer, and how much did he give you?

A. I told you I don't remember how much it came to.

(Testimony of William McMillan.)

Q. No—but how much actual money did you get out of it?

A. \$200.00, I think, besides my expenses.

Q. \$200.00? I thought you said \$20.00, is the reason I asked you that.

A. No, sir. I said \$200.00.

Q. Now, out of that \$200.00 did you have any further expenses to meet? A. No, I didn't.

Q. How did Mr. Dwyer pay you that \$200.00?

A. He gave me a check.

Q. And was it his own check or somebody else's check? A. I couldn't say. [486—156]

Q. Well, I mean was it signed by Mr. Dwyer, or was it signed by somebody else?

A. I think it was signed by him. I think it was, if I ain't mistaken. He gave me a check, and I went in the bank and drawed the money.

Q. Two hundred dollars?

A. I drawed more than that. I drawed money enough to pay for the proving up and everything. I drawed \$700.00 or \$800.00, anyhow.

Q. And to whom did you pay the money you had gotten from Kester? A. I paid Dwyer.

Q. You paid it to Dwyer? A. Yes, sir.

Q. And did you pay a location fee?

A. Well, that was counted in with the expenses.

Q. And did you pay that also to Dwyer?

A. Yes, of course. I done the business—the money business—with Dwyer.

Q. You mean the settling?

A. Yes, settling up. I settled up with Dwyer.

(Testimony of William McMillan.)

Q. And after it was all settled up how much did you have?

A. Well, I couldn't tell how much I had. I had \$200.00. I don't know whether I spent any that day or not.

Q. Well, I mean was the \$200.00 clear?

A. Yes, the \$200.00 was clear of all expenses. That was more than I expected to get.

Q. Did you understand who the grantee was in the deed that you made at the instance—when you made the deed that Mr. Dwyer was talking with you about?

A. Yes.

Q. Who?      A. Kittie E. Dwyer.

Q. And did you understand who Mr. Dwyer was purchasing it for? [487—157]

A. No, I didn't understand that altogether right. In fact, I didn't care. I was looking out for myself; I wasn't looking out for his business; it was the money side I was looking after. You know that is six years ago, and I forget a good many of these things.

Q. After you talked with Mr. Kester the first time did you endeavor to interest any other people in taking up a timber claim?

A. I didn't try to interest any. I had a neighbor right handy by, and I told him I thought he ought to take one up if he could raise the money to, and he could make a little money, too.

Q. Did you tell them where they could get the money to make the proof?

A. No. I told them they could probably make



(Testimony of William McMillan.)

\$100.00 or \$200.00 if they could get the money to prove up on it.

Q. Did you tell them of the conversation you had with Mr. Kester?     A. No, I didn't.

Q. You didn't mention his name?

A. Well, I might have mentioned his name, knowing he was up there, but I didn't tell them anything about the conversation I had with him about the timber claim.

Q. And who were these neighbors of yours which you spoke of?     A. Ben. Rowland and wife.

Q. Mr. McMillan, would you have sold this claim to anybody but Mr. Kester, or someone that Mr. Kester agreed that you could sell it to, for the same price that you sold it?     A. I don't believe I would.

Q. Did you feel under obligations to Mr. Kester to let him have that timber claim?

A. Not any obligations; I felt I would give him the preference.

Q. Well, did Mr. Kester tell you when you first saw him that he was going to buy timber claims, or was interested in getting timber claims?

A. No, he didn't. [488—158]

Q. Well, what made you think that he should have the first call for that claim?

A. Well, I understood after that that he was buying timber claims, by others.

Mr. GORDON.—I will state to counsel that I have not the deed that was made by Mr. McMillan, and I assume that there will be no objection to stipulating that we can get either an abstract of it or a certified

(Testimony of William McMillan.)

copy, and putting it in the record at that time?

Mr. TANNAHILL.—No, we will have no objections to that.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of William McMillan, dated April 25th, 1904, the Nonmineral Affidavit of William McMillan, of the same date, the notice for publication of William McMillan, of the same date, the testimony of William McMillan given on final proof, and the cross-examination of Mr. McMillan at the same time, dated July 18th, 1904, the testimony of witnesses on final proof, the Receiver's Receipt and the Register's Certificate, dated July 18th, 1904, a certified copy of the patent, dated December 31st, 1904, issued to William McMillan; all of said papers relating to the entry of William McMillan of the southeast quarter of section 21, township 39 north, of range 5 east, Boise meridian.

Mr. TANNAHILL.—The defendants object to all of the documents offered in evidence in so far as they relate to case No. 388 and 407, upon the ground that the entry is not involved in these two cases, and they are irrelevant and immaterial. And the defendants respectively object to that portion of the documents relating to the final proof, and especially designated as the proof of publication, the testimony of Edwin Bliss, the cross-examination of Edwin Bliss, the testimony of William Dwyer, the cross-examination of William Dwyer, the testimony of claimant, William McMillan, and the cross-examination of claimant, William McMillan; upon the



(Testimony of William McMillan.)

ground that they are irrelevant and immaterial. The defendants respectively waive any further identification of the documents. [489—159]

Said documents were thereupon marked by the Reporter as Exhibits 7, 7A, 7B, 7C, 7D, 7E, 7F, 7G, 7H, 7I, 7J, 7K, 7L, 7M, and 7N.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. McMillan, how long was it after you got your patent before you sold the land to Mrs. Dwyer?

A. I sold the land before I got my patent.

Q. Before you got your patent? A. Yes, sir.

Q. And how long was it after you made your final proof? A. Nearly two years, I think.

Q. Had you made an effort to sell your land to anyone else during that time?

A. No—there was no buyers. Nobody offered to buy it from me.

Q. How much of your own money did you use in paying for the land? A. Eh?

Q. How much of your own money did you use in paying for the land?

A. I couldn't tell you right now. It is quite a while ago. I couldn't tell you.

Q. About how much of your own money did you have? A. Why, \$100.00 or more, I guess.

Q. And the balance of the money you borrowed from Mr. Kester?

A. Yes. I don't know whether I borrowed it or not, but he let me have it.

Q. And you told him you would pay him back



(Testimony of William McMillan.)

when you sold your claim?      A. Yes, sir.

Q. You and Mr. Kester were good friends, were you?      A. Yes; I was well acquainted with him.

Q. You were well acquainted with him?

A. I expect he wouldn't give anybody else the same chance. He knew me for a long time. [490—160]

Q. I believe you said you had no contract or agreement to sell this land to anyone at the time you made or filed your sworn statement.      A. No, sir.

Q. You had no contract or agreement at the time you made your final proof?      A. No.

Q. Then your affidavit that you filed at the time you filed upon the land, stating that "I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly or indirectly made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that statement was true, was it?

A. Yes, sir, that is true. I helped nobody but myself, and what money I got was for my own benefit.

Q. And that is true now?

A. Yes. I wasn't doing it for anybody else only myself.

Q. And the only obligations you felt under to Mr. Kester was to give him the preference right of purchasing?

(Testimony of William McMillan.)

A. Yes. I thought I had a right to do that.

Q. Sure—and you didn't feel that he was under any obligations to purchase it from you?

A. No, he didn't. Well, he didn't purchase from me—well, he did, really.

Mr. GORDON.—Q. Did you ever make any other deed to this land to anybody?

A. No, sir. [491—161]

**[Testimony of Charles Carey, for Complainant.]**

CHARLES CAREY, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Charles Carey? A. Yes, sir.

Q. Where do you reside, Mr. Carey?

A. Pierce, Idaho.

Q. Where did you reside in August, 1904?

A. I was in Lewiston at that time.

Q. What was your occupation?

A. I had a shooting-gallery and a cigar-store, etc.

Q. What had been your occupation just prior to that time, or business?

A. I am a jeweler by trade.

Q. Well, were you in the jewelry business, or in the butcher business?

A. I went to work for Mr. Shaeffer in the winter time, I think, of 1904.

Q. And was that in the butcher business?

A. Yes, sir.

(Testimony of Charles Carey.)

Q. Who spoke to you about taking up a timber claim?

A. Why, I wanted to get a claim, and I had Mr. Scotty look out for a claim for me.

Q. Now, what did Mr. Scotty say to you when he first talked to you about it?

Mr. TANNAHILL.—If the Court please, we desire to object to all the evidence of the witness in relation to any claims, upon the ground that the claim filed upon and to which the witness acquired title is not involved in the suit in any of the actions pending, and the evidence is irrelevant, incompetent and immaterial.

The last question was thereupon repeated by the Reporter. [492—162]

WITNESS.—Well, I had asked him to hunt me up some parties that could locate me, and he said he would see what he could do, and it ran along a long time, and I saw him at different times. Scotty worked for me part of the time, and I met him up in the woods one day, up near this timber, and I again asked him if he was going to be able to find anything, and he said he thought he could; and then that fall sometime he came to me one day and said he knew where I could get a claim.

Q. Is that the way of it, or did Mr. Scotty come to you and ask you to take up a claim, and told you there would be \$150.00 in it to you?

Mr. TANNAHILL.—We object to that as irrelevant, incompetent and immaterial, and cross-examination of his own witness, and improper.



(Testimony of Charles Carey.)

Mr. GORDON.—Answer the question.

A. He came down there and said he knew where he could get me a claim; he said he thought I would be able to get \$150.00 out of it.

Q. And did you know Mr. Dwyer at that time?

A. No, sir.

Q. And how long after that did you meet Mr. Dwyer?

A. Why, I believe it was the same afternoon—the same day.

Q. Well, did Mr. Scott take you around to see Mr. Dwyer?     A. I think he walked up with me.

Q. Now, what did he say when he presented you to Mr. Dwyer?

A. He introduced me to him and said that Charlie was a good boy, or Mr. Carey is a good boy, or something like that, and told him what I wanted, that I wanted a claim, and I don't recollect every little word, but that was the substance of it, and Mr. Dwyer told me he thought he could locate me—in fact, he could locate me, and he said he didn't think the way the timber was that there would be over \$125.00 in it.

Q. He told you what?

A. That it wouldn't be over \$125.00 that I would be able to sell it for.

Q. Did Mr. Scott tell Mr. Dwyer when he introduced you to him [493—163] that you were a good boy, or that you were all right?

A. He said, "He is a good boy; he is an all right fellow," and told how long he had known me, and

(Testimony of Charles Carey.)

different things.

Q. And when you were introduced to Mr. Dwyer, what else did he say at that time about taking up a timber claim?

A. He said I wanted to take up a timber claim.

Q. Well, what did Dwyer say?

A. Oh, Mr. Dwyer? He told me that he could locate me, and he said the least said about it would be the better; I had better keep it to myself.

Q. Was there any arrangement then about where you were to get the money to pay for this land?

A. No; I never said anything to Dwyer about money.

Q. Had you said anything to Mr. Scott about the money?

A. Scotty knew I would have to have the money.

Q. Well, you knew you would have to have the money, too, didn't you?

A. I knew I would have to have some.

Q. Did Mr. Scott tell you where you could get the money?

A. He said he thought Mr. Dwyer could get it for me.

Q. Did Mr. Dwyer take you to this timber claim?

A. No, sir.

Q. Are you a timber locator?

A. Why, I have done a little of it since that time. At that time I didn't know anything about timber at all. I have been up there in the timber quite a little now.

Q. How did you know the claim you had in mind

(Testimony of Charles Carey.)

to locate upon was the same claim you had seen on a fishing trip?

A. Well, we were there ten days, and he was around this country and section, and I was pretty sure I had been on the claim.

Q. I understood you to say you knew nothing about the locating business at that time? [494—164]

A. No, not to go out and make a business of locating. I wasn't advertising to locate people, or a regular locator at that time. In fact, I am not now. But then I mean to say that I know a great deal more about the country than I did then.

Q. Could you at that time take a plat and read the descriptions, or run out the quarter sections?

A. Yes, sir.

Q. And tell from that what section of the country it was in, and whether you had been over it?

A. Yes, sir; and there were parties with me that were very familiar—had homesteads right near there.

Q. Did you have any arrangement with Mr. Dwyer to pay him a locating fee?

A. I don't know that there was anything said at that time; I believe not.

Q. Well, let me ask you, if you knew where this claim was and you had been over it why you needed a locator, if you wanted to file on it?

A. The claim was—as I understood it, he held—Well, I didn't know the claim; no; I will take that back; I didn't know where the claim was, of course.



(Testimony of Charles Carey.)

He says, "You have been over there in that territory."

Q. Now, go on and tell what it was that Mr. Dwyer held? A. He had a relinquishment, I suppose.

Q. Well, did you suppose, or didn't you know it?

A. Well, I didn't know it, not until I came to file.

Q. And then he turned the relinquishment over to you? A. Yes, sir.

Q. And did you pay anything for the relinquishment? A. No, I didn't.

Q. Were you asked to pay anything for the relinquishment? A. No, sir. [495—165]

Q. And then you went to the land office and filed your original papers, or your application?

A. Yes, sir.

Q. I show you timber and stone lands sworn statement signed by Charles Carey, dated August 23d, 1904, and ask you if you signed that paper and filed it in the land office the date it bears?

A. That is my signature all right.

Q. I show you the testimony given by Charles Carey on final proof, dated November 18th, 1904, and ask you if that is your signature to that?

A. Yes, sir.

Q. I show you the cross-examination of Charles Carey, taken at the same time, and ask you if that is your signature to that? A. Yes, sir.

Q. Who prepared that sworn statement for you?

A. The first one?

Q. Yes, sir.

A. The first one, I think, Mr. Dwyer made out.

(Testimony of Charles Carey.)

Q. Did Mr. Dwyer take you, immediately after you were introduced to him by Mr. Scott, and prepare that paper for you?

A. No; it was the next day, or within a day or two after.

Q. Do you know where that paper was prepared?

A. It was in a room there right away from the land office.

Q. Do you remember whose office it was?

A. No, I don't know only from hearsay afterwards.

Q. Well, was it in the office occupied by Mr. I. N. Smith, the lawyer?

A. I have understood that since.

Q. You don't know of your own knowledge?

A. I don't know.

Q. Then you took that sworn statement and went to the land office? [496—166] A. Yes, sir.

Q. Did Mr. Dwyer go with you? A. No, sir.

Q. Do you remember how much you paid in the land office when you filed your sworn statement?

A. No, I don't remember exactly.

Q. Do you remember how much it was?

A. No. It was no great sum, but I couldn't say.

Q. Where did you get the money that you paid in the land office? A. Dwyer gave it to me.

Q. Who? A. Mr. Dwyer.

Q. Did you suggest the final proof witnesses, or did Mr. Dwyer suggest them?

A. A few days before we proved up I asked him what there was about it, something like that, and

(Testimony of Charles Carey.)

in a few days I told him my time was up on the notice—the 18th, rather—called his attention to it, and at that time he asked me if I would have the money.

Q. Is that the first time he had said anything to you about the money?      A. That is the first time.

Q. Well, when you started this entry, did I understand that you didn't have even the money to file your original papers in the land office?

A. Oh, I had the money.

Q. Sir?      A. I had money enough to do that.

Q. Well, why was it you got it from Mr. Dwyer, then?

A. Well, I had understood from Mr. Scotty that he would furnish me the money.

Q. Furnish you all the money you needed?

A. Yes, sir. [497—167]

Q. And did you have to ask Dwyer for it, or did he hand it to you?

A. No; he just handed it to me.

Q. You didn't tell Dwyer that you didn't have the money?      A. No; there was no questions asked.

Q. And then I understand you to say you went to Mr. Dwyer when it came time to make the proof, and suggested that you needed the money?

A. A few days before I said it would soon be time to prove up, and he said, "When is it, Charlie?" and I says, "It is the 18th," and he says, "Have you got money enough?" and I told him no.

Q. And what did he say then?

A. I don't remember the words he might have



(Testimony of Charles Carey.)

said. I know I got money from him.

Q. Now, did you get the money the day you made the proof, or how long before?

A. It was the day before, I think.

Q. And what did you do with the money?

A. I deposited it in the Lewiston Trust Company.

Q. Is it the Lewiston Bank, or the Idaho Trust?

A. The Idaho Trust, I guess it is.

Q. How much money did he give you?

A. \$400.00.

Q. And when you deposited it in the Idaho Trust Company, did you just open an account; or did you get a certificate of deposit?

A. I got a certificate of deposit.

Q. Why did you do that?

A. Why, he suggested that. I don't remember. I went in there and deposited it and took a certificate of deposit.

Q. And was there any reason stated by Mr. Dwyer why you should get a certificate of deposit?

A. It seems to me that he said it would be handier for me to [498—168] take to the land office.

Q. Did you take it to the land office?

A. Yes, and they refused to take checks; they wanted the currency.

Q. Do you remember whether or not Mr. Dwyer told you that it would look better if you deposited the money and went there?

A. Yes, he said something like that; that it would look better.

Q. Now, when you got the money from Mr. Dwyer

(Testimony of Charles Carey.)

was there anything said by him as to the questions that would be asked at the land office?

Mr. TANNAHILL.—We object to that as irrelevant, incompetent and immaterial, relating to the final proof and not to the sworn statement.

Mr. GORDON.—Answer, please.

A. I don't know at that time whether there was or not; there was one time before. I had seen the papers there, or something about it, I don't just recall now; but I knew there was questions there that didn't look just right, and I called his attention to it, and I just forget now—

Q. Do you remember whether you had any discussion with him about certain parts of your sworn statement—the first paper you filed?

A. The first paper?

Q. Yes.

A. That would be the one there in the office. I don't remember about that; I don't believe I did; I think that was filled right out.

Q. But do you remember that your sworn statement contained this clause, to which you were sworn: "That I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part for the benefit of any person except myself"? Do you re-

(Testimony of Charles Carey.)

member whether or not before you signed and swore to that paper that you discussed the [499—169] propriety of taking that oath, with Mr. Dwyer?

A. I couldn't say whether it was the first paper or the second one. This is the—excuse me.

Q. I am speaking of the first paper now.

A. The first paper?

Q. Yes.

A. I can't remember on that first paper, whether it was the first or second one. We discussed that question, but whether it was on the first or second one I don't know.

Q. What did Mr. Dwyer say about that?

A. He says, "You are taking it up for your own benefit."

Q. Did he explain why you were taking it up for your own benefit?

A. Yes; he said, "If you can sell it you will get something for yourself."

Q. Did he argue it with you?

Mr. TANNAHILL.—We object to that as leading and suggestive, and cross-examination of his own witness.

Mr. GORDON.—Answer the question.

A. Yes, we argued it back and forwards and talked it over.

Q. Did he give you a set of the questions that you would be called upon to make answer to on final proof, for you to go over?

A. Yes, I seen a set of those.

Q. Now, where did you see them?



(Testimony of Charles Carey.)

A. He gave them to me to take them down to my home to look them over.

Q. And did he give you any instructions as to them?

A. He said that Mr. Scotty could inform me probably on the questions I wasn't sure of. I asked Mr. Scotty, but he didn't seem to know any more about it than I did myself, and I stopped Mr. Dwyer once and asked him about them.

Q. What did Mr. Dwyer say about it when you stopped him?

A. He said there was nothing wrong about it; that I was taking '[500—170] it up for my own benefit. The question that bothered me, one thing was the question—you couldn't hire money, and I was hiring this money.

Q. Was anything said about how you should answer the question about the agreement?

A. Well, I don't know now. I had no agreement to sell to any certain person.

Q. Well, was there anything said about that between you and Mr. Dwyer?

A. I don't just recall now.

Q. And you went to the land office and made your proof? A. Yes, sir.

Q. And you made proof with the money that you had gotten from Mr. Dwyer? A. Yes, sir.

Q. Did I understand you to say how much Mr. Dwyer gave you?

A. He gave me \$400.00, at the time I deposited it in the bank.

(Testimony of Charles Carey.)

Q. Do you remember when you made proof this question being asked you: "Did you pay out of your own individual funds all the expenses in connection with making this filing, and do you expect to pay for the land with your own money?" and that you answered "Yes"? Do you remember that?

Mr. TANNAHILL.—We object to that question, upon the ground that it is irrelevant and immaterial, and we object to all the questions in relation to the final proof upon the same grounds.

Mr. GORDON.—Q. Did you make that answer?

A. Yes, sir.

Q. Was that true?

A. I considered it my money. I hired it.

Q. The next question, do you remember this: "Where did you get the money with which to pay for this land, and how long have you had [501—171] the same in your actual possession?" and the answer is: "Earned it in my business. 12 years." Do you remember that question being asked you?

A. Yes, sir.

Q. And you making that answer? A. Yes, sir.

Q. Was that true? A. No, sir.

Q. The next question, "Have you got a bank account during the past six months; and if so, where?" "Answer. Yes, sir. Idaho Trust Company." Do you remember that question and answer?

A. Yes, sir.

Q. Was that certificate of deposit that you had the only deposit you had with the Idaho Trust Company? A. No, sir.

(Testimony of Charles Carey.)

Q. Now, that question about having the money in your possession for a certain length of time, did you discuss that with Mr. Dwyer?

A. I don't remember of it. I might have done.

Q. Well, what induced you to make that answer?

A. That is where I answered the 12 years, is it?

Q. Yes, and that you earned it in your business.

A. I don't know whether it was Mr. Dwyer or Mr. Scotty suggested that to me; it was one or the other.

Q. After you made your proof, or the same day you made your proof, did you see Mr. Dwyer again?

A. Yes, right after I made proof.

Q. Did Mr. Dwyer go to the land office with you to make your proof?

A. Yes; he was one of my witnesses.

Q. Did he go to the Idaho Trust Company with you to get your certificate cashed?

A. No, sir. [502—172]

Q. The Idaho Trust Company is just on the other corner of the street from the land office, wasn't it?

A. It wasn't very far; it was up there two doors was all.

Q. Did he wait at the land office while you went to get it cashed?

A. He was around the building somewhere.

Q. And when you had made your proof and came out— Did they give you a receipt at the land office?

A. Yes, sir.

Q. And did you meet Mr. Dwyer in the building just after you came out of the land office?

A. Yes, sir.



(Testimony of Charles Carey.)

Q. And what did you do with your receipt?

A. I gave it to Mr. Dwyer.

Q. And then what happened?

A. He gave me a receipt for a location.

Q. And what else did he do at the same time?

A. Well, he gave me \$125.00 that day a little later.

Q. Now, he gave you \$400.00, I understand, to make your proof? A. Yes, sir.

Q. He didn't give you any more money at that time, did he? A. No, sir.

Q. And then you came out of the land office and he gave you a receipt?

A. Well, he gave me \$150.00.

Q. When was that?

A. Well, it was just before I made proof, I guess.

Q. And then you came out of the land office and you gave him your receiver's receipt, and he gave you a receipt for what? A. For a location.

Q. And had you paid him any location fee?

A. Not up until this time. I paid him this \$150.00.

[503—173]

Q. He gave you \$150.00?

A. Yes, before I proved up.

Q. And then did he ask you for that \$150.00?

A. I can't remember what he did say just now. He wrote me out a receipt for the location, and whether he asked me for the money—he must have said something in that regard, but what words he said—

Q. Didn't he tell you that he gave you that \$150.00, and if you would give it back to him he would give

(Testimony of Charles Carey.)

you a receipt for it, to make it look regular?

A. Well, I know he charged \$150.00 for the location.

Q. But it was the same \$150.00 that he gave you?

A. The same \$150.00 that he gave me.

Q. Then did you get any more money that day?

A. I got \$125.00.

Q. Now, state how that happened.

A. Well, we went down to the California Wine House, and he gave me \$125.00.

Q. Now, what did he give you that for?

A. Well, that was for—he said when I took up the claim he said I could get that much out of it if I wanted to sell it.

Q. And that was carrying out his part of the agreement, was it?

A. Well, yes, I think so, as I understand it.

Q. Did you give him a note for this money that you got from him?      A. No, sir.

Q. You didn't pay him any interest on it?

A. No, sir.

Q. And did you make a deed to Mr. Dwyer or anybody else?      A. Not at that time.

Q. Well, after your proof, on the same day, you went to some office with Mr. Dwyer, did you not?

A. Yes, I think it was that same day.

Q. Whose office was it? [504—174]

A. It was over the trust company.

Q. Well, don't you know whose office it was?

A. It said "Kettenbach" on the door, but I don't know who.

(Testimony of Charles Carey.)

Q. Well, do you know which Mr. Kettenbach? There are a lot of them.

A. No. I don't know any of them.

Q. And what did you do when you went in there?

A. I signed some paper.

Q. Now, don't you know what it was?

A. No—I never read the paper.

Q. And do you own any property, Mr. Carey?

A. At the present time?

Q. Yes.

A. Well, not straight. I have a little, but it is sold under deeds in trust.

Q. Well, are you in the habit of signing away property rights which you have, without even reading the papers?

Mr. TANNAHILL.—We object to that as leading and suggestive, and improper, and cross-examination of his own witness.

WITNESS.—I wouldn't at the present time, no. At that time I had never owned anything of that kind. It was new to me.

Mr. GORDON.—Q. I will ask you whether or not you had any interest in this whole transaction other than the \$125.00 that you were told you could get out of it when you first talked with Dwyer?

Mr. TANNAHILL.—We object to that as calling for a conclusion of the witness and not a statement of fact; and on the further ground that the witness has stated the conversations and what transpired.

Mr. GORDON.—Answer the question.

A. He told me to go on. He said, "Now, Charlie,



(Testimony of Charles Carey.)

if you can find a buyer that will give you any more money, come and let me know."

Q. When was that? [505—175]

A. That was that same day.

Q. Did you ever get any more money?

A. No, I never did.

Q. What did you consider that \$125.00 was for that he gave you at the Wine House?

A. I considered I took up his proposition of \$125.00.

Q. Well, didn't you consider that you had already taken his proposition?

A. Well, just as he said, "If you can get another buyer to take it up and get any more money, to go ahead and do it."

Q. And you already had the money?

A. I had the \$125.00.

Q. Well, what was it you signed when you went to Mr. Kettenbach's office?      A. I don't know.

Q. What did it look like?

A. It was a long piece of paper.

Q. Printing on it?      A. Some printing on it.

Q. Do you know a deed when you see one?

A. Yes, sir.

Q. Do you know whether it was a deed or not?

A. It was just one sheet—one long sheet.

Q. Did you acknowledge it before Mr. Kettenbach?

A. Yes, sir.

Q. Was the paper prepared when you went there?      A. Yes, sir.

Q. And you just signed it?      A. Yes, sir.

(Testimony of Charles Carey.)

Q. And did you get your \$125.00 before then or after that?

A. It was afterwards; after I signed the paper.

Q. Immediately after?

A. Well, we walked from there down to the land office—ten minutes, maybe. [506—176]

Q. Now, Mr. Carey, do you remember when this matter of taking up a timber claim was first broached to you that you went out looking for Mr. Scott or whether Mr. Scott came to your place and asked you if you wanted to take up a timber claim?

A. He was working for me when I first asked him to look me up a claim.

Q. Well, do you ever remember any time he ever came to you and asked you if you wanted to take up a claim?

A. At a time after he had already found one, he came down and said, "I know where you can get a claim."

Q. What did he say about it then?

A. He went on and told me it was a pretty fair claim, and said I could get \$150.00 off of it.

Q. What did he say about the expenses?

A. He told me I could get my expenses paid.

Q. What did you tell him?

A. I think I told him I would locate on it.

Q. Wasn't it then that you went right around to Mr. Dwyer's?

A. I believe we went right around and saw Mr. Dwyer that afternoon.

Q. Now, was the conversation that you had with

(Testimony of Charles Carey.)

Mr. Scotty that you were to get \$150.00 for your claim, or \$150.00 for your right?

A. Well, I understood it right at that time.

Q. You understood that you were to sell your right?

A. Everybody in town it seemed as though was selling that way. It seems as though people came along to my place of business every day talking about selling their rights.

Q. Did you know to whom they were selling their rights?

A. There was a good many people buying at that time.

Q. Do you remember that in some of the questions asked you at the land office you testified that you didn't know of any persons that were buying timber claims?

A. I don't know as I remember that question. I don't know of anybody buying, but there was people that was buying, but I didn't know [507—177] them; I wasn't acquainted with anybody.

Q. When you went to the land office the first time and made out your notice of publication, who suggested the final proof witnesses?

Mr. TANNAHILL.—We object to it on the ground that it is irrelevant and immaterial, and relates to the final proof and something occurring subsequent to the filing of the declaratory statement, and irrelevant and immaterial.

The EXAMINER.—Answer the question.

A. Mr. Dwyer.



(Testimony of Charles Carey.)

Mr. GORDON.—Q. Now, do you remember whether or not you had a conversation with Mr. Dwyer just before making your proof, as to what you should testify to in the land office with reference to whether or not you had an agreement?

Mr. TANNAHILL.—We object to it as repetition, irrelevant and immaterial.

The SPECIAL EXAMINER.—Answer the question.

A. I think we did; I am sure we did.

Mr. GORDON.—Q. Now what brought about that conversation?

A. I don't know whether I asked him or he told me without asking; I couldn't say.

Q. What did he tell you?

A. He says, "You haven't any agreement to sell."

Q. Well, what else?      A. I don't remember now.

Q. But you did sell though within a half hour afterwards, didn't you?

A. No, I didn't deed the place until six months afterwards.

Q. I am not asking you about deeding it now. I am asking you about selling.

A. No, I didn't consider that I had. He told me if I could find a buyer to let him know.

Q. He had already paid you the \$125.00? [508—178]

A. He had paid me the \$125.00; he said I could realize that on the claim.

Q. And you had realized it?      A. Yes.

Q. Then what interest did you have in it?

(Testimony of Charles Carey.)

Mr. TANNAHILL.—Objected to as irrelevant and immaterial.

A. If I could find somebody to pay more I would get more. Scotty told me I ought to get more for it.

Q. What did you expect you would have to do? Give the money back to Mr. Dwyer? You had already taken it from Mr. Dwyer?

A. Yes, I supposed I would have to pay him back the money.

Q. Do you remember testifying, Mr. Carey, at the trial of Mr. Kester, Mr. Kettenbach, and Mr. Dwyer, at Moscow, in the spring of 1907?

A. Was that the first case?

Q. Yes. A. Yes, I was over there.

Q. You remember testifying, don't you?

A. Yes, sir.

Q. And do you remember what you said when you testified in that trial as to what you understood you had done when you gave Mr. Dwyer your final receipt?

Mr. TANNAHILL.—We object to that on the ground that the witness has a right to examine his evidence if he wants to before he answers any question in relation to it.

Mr. GORDON.—I haven't any objection to the gentleman seeing his evidence.

A. At that time I was pretty badly rattled, I was pretty badly scared. They had me there in the sweat-box, and they were going to indict me.

Q. What for?

(Testimony of Charles Carey.)

A. If I didn't seemingly go right against what was right.

Q. You admitted to them that you had perjured yourself, didn't you? [509—179]

A. Yes, sir.

Q. And you have admitted here that the statements you made in the land office were untrue, haven't you?

A. Yes, with regard to having the money.

Q. Well, were you scared when this question was asked you? (I read from page 321 of case No. 1605, mentioned in the stipulation on the first day of the hearing.)

A. I was pretty badly excited during all of that.

Q. Were you excited when this question was asked you: "Was there anything said at that time you gave it to him, at the time, by either of you, why he wanted it, or why you gave it to him?" That refers to giving Mr. Dwyer the final receipt. And to which your answer was: "I don't think there was." Do you remember that question being asked you and that answer being made?

A. I don't remember.

Q. Do you remember this question being asked you: "How did you happen to give it to him? Answer. I had understood previously that I had to deed it over to someone, and I thought that was all there was to it." Do you remember making that answer?

A. I don't know that I do, although I remember I would have to deed it to somebody in order to ever



(Testimony of Charles Carey.)

get any money out of it.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Charles Carey, dated October 23, 1904; the testimony of Charles Carey given on final proof, and the cross-examination thereof, which has been identified by the witness Carey; the testimony of the witnesses on final proof; the receiver's receipt and the register's certificate, dated November 18, 1904, all having to do with the north half of the northeast quarter, and the north half of the northwest quarter of section 15, township 38 north of range 6 east, Boise meridian.

The above exhibits were thereupon marked 8A, 8B, 8C, 8D, 8E, 8F, 8G, 8H, 8I, 8J, 8K, and 8L.

Mr. GORDON.— [510—180] Q. I show you receipt signed by William Dwyer, dated November 18, 1904, which reads as follows: "Received of Charles Carey \$150.00 in full for location fee. Signed, William Dwyer." Is that the paper that your referred to awhile ago?

A. Yes, sir.

Q. As being the receipt he gave you for the \$150.00? A. Yes, sir.

Mr. GORDON.—We offer that in evidence.

Mr. TANNAHILL.—The defendants severally object to each and all of the papers offered in evidence, upon the ground that they are irrelevant, incompetent and immaterial. And the defendants especially object to the introduction in evidence of the final proof papers designated as testimony of the claimant Charles Carey, cross-examination of claimant

(Testimony of Charles Carey.)

Charles Carey, testimony of witness William Dwyer, and cross-examination of witness William Dwyer, testimony of witness Melvin C. Scott, and cross-examination of the witness Melvin C. Scott, upon the ground that they are incompetent, irrelevant and immaterial.

Mr. GORDON.—Take the witness.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Carey, in reply to Mr. Gordon's questions, you stated that you was confused and scared when you was at Moscow, when you testified in the other two trials, that you had been in the sweat-box for a long while, and they threatened to indict you. Who was it that threatened you?

A. I don't know their names; they was supposed to be Government men.

Q. Do you know Mr. O'Fallon?

A. Yes, I believe he was one of them.

Q. Was he one of them?      A. Yes, sir.

Q. Do you know Mr. Ruick, who was at that time United States [511—181] district attorney?

A. Yes, sir.

Q. Was he one of them?

A. No, he didn't say anything to me.

Q. Do you know Miles Johnson, who was assistant at that time?      A. Yes, he was there.

Q. And was he one of them that talked to you in the sweat-box?

A. He was in there; I don't know,—they was all chipping in, first one would talk and then another;



(Testimony of Charles Carey.)

I don't know which one.

Q. How long did they have you in the sweat-box?

A. I couldn't say just how long,—quite awhile.

Q. Was you in the sweat-box more than once, or different times?

A. I don't remember; I guess just the once.

Q. Now, Mr. Carey, in response to a question from Mr. Gordon, I understood you to say that you did not consider that you had any contract to sell your land to anyone, before you made final proof, and that your statement in that regard is true. That is right, is it?

A. Yes, sir, I never considered that I had an agreement.

Q. Then in your sworn statement, where you swore that, "I have made no other application under said acts." That is true, is it? You had made no other application? A. No.

Q. "That I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself." That is true, is it?

A. Yes, I thought it was for my own benefit.

Q. And it was true then, and it is true now?

A. Yes, sir.



(Testimony of Charles Carey.)

Q. Now, Mr. Carey, do you remember that in the former trials [512—182] you were confused and thought that you had signed a deed to your land when you proved up?

A. I thought I had signed something; I wasn't sure what it was; in fact I don't know today.

Q. And do you remember that you made your final proof on the 18th of November, 1904, do you?

A. Yes, sir.

Q. I will show you this deed, dated and acknowledged April 15, 1905, and ask you if you now remember of that being the time that you conveyed the land, that you deeded the land?

A. Yes, I remember this.

Q. And that was when you finally deeded the land away? A. Yes, sir.

Q. Now, do you not remember, Mr. Carey, that the instrument you signed when you made your final proof and gave to Mr. Dwyer was an option which gave him the right to sell the land for you if he could find a buyer?

A. I don't know what the paper was.

Q. It might have been that kind of a paper?

A. It might have been an option for all I know.

Q. And that he told you if you could sell it for any more money to go ahead and sell it?

A. He said to come and let him know.

Q. And you wasn't able to sell it for any more money? A. No.

Q. And you finally told Mr. Dwyer that you wanted to make a settlement and settle up?

(Testimony of Charles Carey.)

A. Yes, that I was going to leave.

Q. And then is when you and Mr. Dwyer got together and settled up, and you gave him this deed?

A. He asked me when I wanted to leave town, and I told him, and he says, "Come around to-morrow or next day and I will see what I can do for you, or let you know," or something to that effect.

[513—183]

Q. And you practically had control of your land up until that time?

A. From what he told me I supposed I did.

Q. And after you gave him this deed you considered that you had no more interest in the land after that? A. No, I considered it sold then.

Q. You are somewhat familiar with the custom of locating people on claims, are you not?

A. At the present time, yes.

Q. And it is customary for people, for a locator to see that they have the proper witnesses, that they get the proper description of the land, and that they get their filing made properly, is it not?

A. It is often the case that they do; it depends how familiar they are themselves with it, whether they are strangers in the country or not.

Q. People who locate on land are usually not very familiar with the boundaries of it or the country, are they?

A. No, you are supposed to show them the land, show them the corners.

Q. Now, Mr. Carey, you remember of testifying at Boise, do you, in the cases of United States



(Testimony of Charles Carey.)

against Kester, Kettenbach and Dwyer, the criminal cases, in which they were acquitted, involving a portion of this same land, and especially involving your claim?     A. Yes, sir.

Q. And your evidence there was substantially the same as you have given it here, was it not?

A. So far as I know.

Q. And you stated, Mr. Carey, that you understood at the time you sold your land that you were selling your right, or words to that effect. I will ask you if you haven't since discovered that you was mistaken in that term, in using that term?

A. Yes.

Q. That when a man locates on a piece of land and takes it up [514—184] and afterwards sells it, he is simply selling the land, and that he don't sell his right?     A. No.

Q. You also understand that when a man locates on a piece of timber land he usually expects to sell it and make some money out of it? That is your understanding of it, is it not?     A. Yes, sir.

Q. And if he does do that, locates upon a piece of land with the intention of selling it and making some money out of it, you do not understand that he is doing anything wrong, do you?

A. Why, no, I don't think so.

Q. When you say that Mr. Dwyer said, "The least said about your entry the better," do you not remember that Mr. Dwyer had a relinquishment to this tract of land at that time that had not been filed, and that he was afraid that if it was made



(Testimony of Charles Carey.)

public that someone would file a contest, or something of that kind, and prevent your filing on it?

A. Well, I couldn't say positively whether he told me that, that there was a relinquishment or not. It seems to me, since you speak about it, that Mr. Scotty told me that, he told me of it before I met Mr. Dwyer.

Q. Told you there was a relinquishment?

A. Yes, it was a relinquishment. It seems to me he told me something about it.

Q. You had no contract to sell your land to Kester and Kettenbach, before you made your final proof, did you?     A. No.

Q. And had made no contract to sell it to any particular person, before you made your final proof?

A. No, sir, I never knew who I would sell it to.

Mr. BABB.—Q. Mr. Carey, you spoke about going up stairs over the Idaho Trust Company and signing a paper in some office.     A. Yes, sir. [515—185]

Q. You said the sign on the office had the name of Kettenbach?     A. Yes, sir.

Q. I will ask you if you didn't go up there to appear before a notary public in there?

A. Yes, a notary.

Q. Who was that notary public? Was it Mr. Otto Kettenbach, or Mr. J. H. Schildts, do you remember?

A. No, I don't remember.

Q. It was a notary you went up there for?

A. Yes, sir.

Mr. GORDON.—May I ask which time your ques-

(Testimony of Charles Carey.)

tion relates to, Mr. Babb?

Mr. BABB.—Well, mine didn't relate to any special time; it related to the time he spoke of being up there, as this deed being signed.

Mr. GORDON.—I hold a deed in my hand, made by Charles Carey, single, to W. F. Kettenbach and George H. Kester, dated April 15, 1905, executed before John H. Schildts, the same date, conveying the north half of the north half of section 15, in township 38 north of range 6 east, Boise meridian, recorded at the request of the Lewiston National Bank, February 3, 1906. It is stipulated by and between the parties hereto that such deed was executed by Mr. Carey on said date, and recorded at the request of the Lewiston National Bank on the 3d day of February, 1906, further identification being waived.

Mr. TANNAHILL.—Q. Mr. Carey, I will ask you if you remember when Mr. O'Fallon and the other special agents were talking to you, if they used the term, selling your right?

A. I don't remember.

Q. You don't remember whether they did or not?

A. No, sir.

Mr. TANNAHILL.—That is all. [516—186]

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Carey, did I understand you to say that since your entry, or since locating on a timber claim, that you had become a locator?

A. I have done a little; I don't claim to be a professional.



(Testimony of Charles Carey.)

Q. Who did you locate?

A. I have located several.

Q. Name them.

A. That is, I go out and look at the land for them and see whether it is worth locating, and such things as that.

Q. Did you ever take anybody over the land, over a timber claim, and then have them locate on it?

A. Well, I have told them of a good many claims. Location today ain't what it was at the time I located up there, lots of people up there will tell you.

Q. The duty of a locator, as I understand it, is to take people who have a desire to locate or to make entries on various kinds of land, to take them over it and show them the cornerstones?

A. Yes, that is what I understood after I was familiar with the work.

Q. Did you ever take anybody out for that purpose?

A. I am quite familiar with the work, and have been out some, as I say, and have had people ask me my opinion of what the claims would be worth.

Q. But you are not answering my question.

The SPECIAL EXAMINER.—Just answer directly.

A. No, not what you mean, I don't believe I have.

Q. Then you have never located anybody on a claim?

A. No, not actually located.

Q. Are you a cruiser?

A. Well, I am familiar with timber.

Q. What experience have you had, familiarizing



(Testimony of Charles Carey.)

yourself with timber? [517—187]

A. I have owned several claims myself.

Q. How many claims have you owned?

A. I have owned three.

Q. Timber claims?

A. Yes, sir, some had timber on, and one was a homestead; of course there was timber on it.

Q. Can you go out into the woods and scale timber?

A. I can estimate a tree.

Q. You can estimate it by counting them?

A. No, but by using my judgment as to the size and how many logs there is in a tree, about what.

Q. Were you ever paid anything by anybody for that service?

A. I was by one fellow; he wanted to take up a forty, and he wanted me to go and look at it to see if I thought it was worth taking up.

Q. Who was that?

A. His name is—he works for the dredge company—George Kissinger.

Q. What did he pay you for that? A. \$10.00.

Q. Did you go up into the timber for him?

A. Yes, sir.

Q. How far is it from here?

A. Oh, it would be around eighty miles from here.

Q. Where were you at the time?

A. I was in Pierce.

Q. How far from Pierce was it?

A. About two miles, or two and a half.

Q. Did you have to hire a team to go over there?

A. No, sir.

(Testimony of Charles Carey.)

Q. And that is the only experience you ever had, either as a locator or estimator of timber? [518—188]

A. In friendship, among my friends, I have been out and looked at quite a good many pieces of timber, for people that I knowed and was interested in seeing them get a claim. I have got two or three parties now that told me to watch out and if I see any vacant land to let them know.

Q. What are you employed at now?

A. I am in Pierce.

Q. What is your business?

A. Oh, common labor, anything I can get to do.

Q. You have spoken of being in the sweat-box. What do I understand you to mean by that?

A. That was the common name the boys was all giving it at that time.

Q. Did you consider that you were in the sweat-box when you were taken into a Government officer's office and asked questions as to what you knew about an alleged offense?

A. That was the name they seemed to call it by.

Q. By whom were you questioned in the United States attorney's office? A. Different ones.

Q. Give who they were. Who were they?

A. I don't know who they were; they all asked me questions.

Q. How many were there?

A. Two or three or four or five.

Q. Was Mr. O'Fallon there? A. Yes, sir.

Q. And Mr. Goodwin? A. Yes, sir.

(Testimony of Charles Carey.)

Q. And Mr. Johnson?

A. Yes, some of the time; I couldn't say that any of them was there all the time.

Q. Did you tell them anything that wasn't true?

A. With regard to the money, I tried to cover that up; I thought [519—189] that was wrong.

Q. But what you told them that was untrue would be evidence in favor of the persons charged, wouldn't it, rather than against them?

A. Against the Government, you mean?

Q. No, the persons that were charged or being investigated.

A. Why, yes, I suppose it was favoring them. You mean favoring Mr. Kettenbach?

Q. Yes.

A. Yes, it was favoring him.

Q. And did you tell all of those gentlemen the same things that you have told in court here to-day?

A. I don't remember.

Q. Did you withhold anything from them?

A. No, I don't remember what I did say.

Q. Did anybody ask you to tell them anything but the truth?

A. They said I wasn't telling the truth.

Q. With reference to where you got the money?

A. No, I think I told them that straight.

Q. Did they tell you you weren't telling the truth about that?

A. Well, when I tried to repeat my land office papers with respect to having it twelve years.

Q. They told you that wasn't true?



(Testimony of Charles Carey.)

A. They told me it wasn't true.

Q. Was that justified?

A. Yes, that was justified.

Q. You say when you testified at the other trial you were scared.

A. In Moscow, yes; we was all scared; we went down there and was all scared.

Q. Were you scared because of your guilty conscience?

A. No, it was the agitation of the thing. People was all there, hundreds of us, I guess, and there were stories circulating and one thing and another.  
[520—190]

Q. What did you tell at the trial of Kester and Kettenbach that was different from what you have told here to-day?

A. No difference; I don't know that there is.

Q. You are not scared now, are you?

A. No, sir; not to my best judgment I don't know that there was anything different.

Q. And you went over your testimony in my office at Boise just before the trial of these gentlemen in March, did you not?      A. Yes, sir.

Q. And you told practically the same story to me, didn't you?      A. As near as I could.

Q. And to the agents of the Government that were there and talked with you about it?

A. Yes, sir.

Q. And you told them practically the same as you testified to at the former trial, didn't you?

A. Yes, I aimed to tell the straight of it, as near

(Testimony of Charles Carey.)

as I could remember.

Q. And there wasn't anyone that showed any disposition to intimidate you then, or threaten you?

A. No, sir; at Boise they was very nice.

Q. And when you were in my office did you still think you were in the sweat-box?

A. No, I didn't.

Q. After you got the \$125.00 from Mr. Dwyer on the day you made your proof, did you ever get any further money for your claim? A. No, sir.

Q. And then the signing of this deed that has been shown you by Mr. Tannahill was just making a deed to put the title in Kester and Kettenbach that you were paid for by Mr. Dwyer the day you made your proof, is that right?

A. He told me the day I met him, the last day, he says, "We will go up here and sign the deed," something like that. I don't think I read the deed the last time; I don't believe I know who it was to.  
[521—191]

Q. And you didn't ask for any more money, and you weren't given any?

A. No, I didn't ask for any.

Q. And you really don't know what kind of a paper it was that you signed when you went to Mr. Otto Kettenbach's office, or Mr. Kettenbach's office, directly after making your proof?

A. No, I don't.

Mr. GORDON.—That is all.

Mr. TANNAHILL.—That is all.

At this time an adjournment was taken until to-

morrow morning at ten o'clock. [522—192]

On Thursday, the 25th day of August, 1910, at ten o'clock A. M., the hearing was resumed.

**[Testimony of Mrs. Mamie P. White, for  
Complainant.]**

Mrs. MAMIE P. WHITE, a witness called by the complainant, being first duly sworn, testified as follows, to wit:

**Direct Examination.**

(By Mr. GORDON.)

Q. You are Mrs. Mamie P. White?

A. Yes, sir.

Q. And you are married, Mrs. White?

A. I am.

Q. To Mr. William J. White?      A. Yes, sir.

Q. Are you acquainted with one of the defendants in the causes we are trying, William F. Kettenbach?

A. Yes, sir.

Q. Are you a relative of his?      A. Yes, sir.

Q. What is the relationship?

A. He is my brother-in-law by marriage.

Q. He married your sister?

A. No; he married my husband's sister.

Q. Your husband's sister?      A. Yes, sir.

Q. Do you know Mr. George H. Kester, one of the defendants?      A. Yes, sir.

Q. Are you related to him also?

A. He is my brother-in-law.

Q. He married your sister?      A. Yes, sir.

Q. Where did you reside in 1904, in April?



(Testimony of Mrs. Mamie P. White.)

A. In Lewiston, across the Clearwater River—the Clearwater [523—193] ferry.

Q. And were you married at that time?

A. Yes, sir.

Q. Do you remember the year that you were married? A. The year? 1901, December 16th.

Q. Mrs. White, do you remember taking up a claim under the timber and stone act, in April, 1904?

A. Yes, sir.

Q. I show you the timber and stone lands sworn statement, dated April 25th, 1904, signed Mamie P. White, and ask you whether you signed that paper and filed it in the land office at Lewiston about the date it bears? A. I did.

Q. And is that your signature to the nonmineral affidavit of the same date? A. Yes, sir.

Q. And the notice of publication, you filed that at the same time, did you? A. Yes, sir.

Q. I show you the testimony of Mamie P. White, taken at the final proof, July 14th, 1904, and I will ask you whether you signed that paper?

A. Yes, sir.

Q. And the cross-examination, taken at the same time? A. Yes, sir.

Q. Mrs. White, will you state the circumstances connected with the taking up of your timber claim?

A. Well, my husband told me about the timber claim, and he said there were a great many people taking them up, and that I had a stone and timber right and that I ought to use it—take advantage of it; that at some future time probably the thing would be of

(Testimony of Mrs. Mamie P. White.)

quite a little value. [524—194]

Q. And how long before you located on the timber claim in question did you go to view the claim?

A. Do you mean before we filed on the claim?

Q. Yes.

A. Well, we were on the claim I believe in October, 1903.

Q. And will you state whether you went alone or with a party? A. I went with a party.

Q. And who composed the party?

A. Mr. and Mrs. Kester—

Q. Mr. and Mrs. George H. Kester?

A. Yes, Mr. and Mrs. George H. Kester.

Q. And that is Mrs. Kester, is Mrs. Edna P. Kester? A. Yes. Mrs. Elizabeth White.

Q. That is your mother-in-law?

A. My mother-in-law. Miss Lizzie Kettenbach.

Q. Is that Miss Elizabeth Kettenbach?

A. Yes, Miss Elizabeth Kettenbach.

Q. Well, go ahead.

A. And Mr. White—my husband.

Q. Did a locator go along with you?

A. Yes, sir.

Q. Who went with you? A. Mr. Dwyer.

Q. Mr. William Dwyer? A. Yes, sir.

Q. And he went from Lewiston?

A. From Lewiston, yes, sir.

Q. This Miss Lizzie Kettenbach that you referred to, is that Miss Elizabeth Kettenbach?

A. Yes, sir.

Q. And do you know what the relationship is be-

(Testimony of Mrs. Mamie P. White.)

tween her and Mr. William F. Kettenbach? [525—195] A. She is his aunt.

Q. Now, what town did you leave the train at when you went to this claim? A. Orofino.

Q. And how far is the claim from Orofino?

A. Well, about—I should say probably about fifty miles.

Q. And how did you travel that route?

A. Well, from Orofino to Pierce we went in rigs, and from Pierce part of the way, as far as Quartz Creek, we went in rigs, and from there on we rode horseback to our claims.

Q. And how long were you away from Lewiston on that excursion?

A. I don't remember distinctly, but I think three or four days.

Q. Three or four days? A. Yes, sir.

Q. Now, do you know why you didn't file or make an application to file immediately upon your return to Lewiston? A. No, sir.

Q. Do you know when you were notified or who notified you when the time to file arrived?

A. Well, I believe my husband told me when it was time to file.

Q. And the day you filed at the land office there was quite a line of people before the door of the land office, was there not? A. I believe there was.

Q. And were you in that line? A. Yes, sir.

Q. And do you remember what position in the line you held? A. I don't remember distinctly.



(Testimony of Mrs. Mamie P. White.)

Q. Well, approximately? How many were there before you?

A. Well, I probably was in the middle of the line. I don't remember.

Q. Well, now, I don't know how long the line was.  
[526—196]

A. Well, I don't remember, either. There might have been probably 25 or 30, or maybe more or less; I don't remember.

Q. And I understand that you were somewhere between 10 and 20 from the head of the line?

A. Probably I was.

Q. And how long had you been in that line?

A. I can't say. I know we filed in the forenoon sometime, and we were there in the morning.

Q. And was there anyone holding the place in line for you? A. No, sir.

Q. When you went to the land office and got into the line, were you at the end of the line then, on the morning you filed? A. Well, I don't remember.

Q. Have you any distinct recollection as to whether or not someone had been procured to hold a position in line for you, and when you went there the morning that you filed on your timber claim that they retired, and you took their place?

A. No, sir; I have no recollection of anyone holding a place in the line for me.

Q. Now, do you remember how much you paid into the land office as a filing fee? A. No, sir.

Q. Did you pay anything?

A. I don't remember as to filing whether we paid

(Testimony of Mrs. Mamie P. White.)

anything or not, or how much; it is such a long time ago.

Q. Do you remember who prepared your filing papers?     A. Yes, sir.

Q. Who?     A. I. N. Smith.

Q. He was a lawyer and had an office in the building in which the land office was?

A. Yes, sir. [527—197]

Q. Do you remember whether or not you paid him anything for that service?     A. I don't remember.

Q. Do you remember whether you gave him the names of the persons that were to be your witnesses at the final proof?     A. I don't remember.

Q. Do you know whether you gave Mr. Smith the description of the property upon which you desired to file?

A. Well, I can't say distinctly, but I suppose that I did. He made the papers out for me.

Q. Did you go to Mr. Smith's office, or did he bring them to you while you was there in line?

A. I went to Mr. Smith's office.

Q. Several months after you made your application to file on this land and filed your sworn statement, you went to the land office again to make final proof?     A. Yes, sir.

Q. Do you remember of paying anything into the land office at that time?

A. I don't remember just about that, but I suppose when I made final proof that I did pay something.

Q. Do you know how much you paid?

(Testimony of Mrs. Mamie P. White.)

A. I think about approximately \$400.00.

Q. \$400.00? A. Yes, sir.

Q. Are you sure about that?

A. I wouldn't swear to it. I don't remember distinctly, but I believe that was it.

Q. Do you remember whether you paid any money into the land office, or whether your husband paid it for you?

A. I think that I paid the money myself.

Q. Did you have an independent bank account at that time? [528—198] A. No, sir.

Q. Did you have any independent income at that time?

A. Well, I had money, but my husband was taking care of it for me, and whenever I needed money I could draw on his account, or ask him for it.

Q. And do you know how much money you had at that time?

A. No, I don't remember exactly how much I did have.

Q. Can you approximate it?

A. I know that at one time that he gave me about \$1500.00.

Q. And when was that; how long before?

A. When we were first married he gave me about that much money.

Q. And did you give it back to him to deposit in his name for you?

A. No— Well, I told him— He didn't give it to me. He told me I could have the money, and I



(Testimony of Mrs. Mamie P. White.)

told him to keep it and then when I wanted it I would ask him for it.

Q. Then he never really gave it to you, but he told you he would keep that much for you?

A. He would keep it for me, yes. It was mine.

Q. Subject to your inclination to spend it?

A. If I wanted to draw on him for that much—  
How is that?

Q. I say, subject to your inclination to spend it?

A. Yes, sir.

Q. And do you know where he kept this money?

A. I don't know exactly; I believe he kept it in the Lewiston National Bank.

Q. And did you not know whether he drew the money out of the bank the morning he made proof or not, with which to pay for his claim and your claim also?     A. I couldn't say.

Q. Had you ever talked with Mr. William F. Kettenbach about the propriety of taking up a timber claim? [529—199]

A. Well, I don't remember distinctly of talking to him especially about it, although we were all friends, and I suppose we might have talked the matter over at different times.

Q. Had you ever discussed the feasibility of taking up a claim, with Mr. George Kester?

A. Well, I probably have. I don't remember of any special time that I did.

Q. Do you remember of anyone ever telling you what the value of this claim was, before you filed on it?     A. No, sir.

(Testimony of Mrs. Mamie P. White.)

Q. Do you remember whether or not you had any idea of how many feet of timber was on the claim?

A. No.

Q. Did you know of anybody that was purchasing timber claims at that time—that was on the market for them?

A. Well, I don't know as I did at that time.

Q. Did you know at that time that Mr. Kester and Mr. Kettenbach were buying timber claims?

A. Well, I probably did.

Q. Can you make that a little more definite, Mrs. White?

A. Well, I will say that I didn't know that they were for a fact buying timber claims.

Q. Had they told you they were buying timber claims?     A. No, sir.

Q. Had your husband told you that they were buying timber claims?     A. That they were?

Q. Yes?     A. No, sir.

Q. Do you remember whether you paid anyone a fee for locating you?     A. Yes, sir.

Q. Who? [530—200]     A. Mr. Dwyer.

Q. When did you pay that, or did someone else pay it for you?

A. Mr. White—I had Mr. White pay Mr. Dwyer, if I remember. I don't remember distinctly, but I believe Mr. White paid Mr. Dwyer for me.

Q. You haven't a very distinct recollection about it?     A. No.

Q. Your impression was that there was a \$100.00

(Testimony of Mrs. Mamie P. White.)

fee for location, and that your husband paid it?

A. Yes, sir.

Q. Now, do you remember whether or not this money which your husband gave you as a present, that he told you he would give you the money just about the time you went into the timber?

A. Well, I know that he gave me some money when I was first married, and as I said, he told me if I wanted to use this money why I could have it. I just let him take care of it for me, and several weeks before I proved up he told me that this money was set aside for me; that that was mine, and it would be ready for me when I was ready to prove up.

Q. You never had actual possession of any of that present until you drew it periodically through him?

A. No. I could draw against his account any time that I wanted to without going to him to see about it.

Q. Well, how did you draw against his account? Did you sign the check "Mamie P. White," or did you sign it "William J. White"?

A. Well, I usually signed it "William J. White, by Mamie P. White," probably.

Q. The reason that I asked you whether you hadn't gotten it just about the time that you inspected the claim was because I see in one of the questions that were asked you at the land office on final proof, that you said in response to the question where you had gotten the money with which to pay for the claim, and the period which you had it



(Testimony of Mrs. Mamie P. White.)

[531—201] in your possession, you answered: "From my husband. He gave it to me as a present last October. Received the money to-day." That was the day you made final proof. Have you any recollection as to whether or not that was about the way in which you received the money, and about the time you received it?

A. Well, Mr. White had given me money at different times, and as I said that he kept this money for me. I don't remember distinctly just exactly when he told me I could have this to prove up on. It was mine all the time, anyway, ever since we have been married, and it was some time before I proved up. I don't remember the date now that he told me that I could have this; but it was mine, and I could have it when I was ready for it.

Q. You have sold your timber claim, have you not? A. Yes, sir.

Q. And with whom did you negotiate the sale?

A. I told my husband that he could sell my claim whenever he wanted to; that when he sold his I wanted him to sell mine, too.

Q. And do you know when he sold it?

A. I believe about a year ago in January.

Q. About 18 months ago.

A. Just about.

Q. And did you receive any money from that claim?

A. I didn't receive the actual cash, no; my husband's and my accounts is just the same as one.

Q. And he attended to all the business for you?

(Testimony of Mrs. Mamie P. White.)

A. Yes, sir, all of it.

Q. Do you know how much your claim was sold for?     A. \$4,000.00.

Q. And do you know whether that \$4,000.00 went into your husband's bank account about 18 months ago?     A. Well, I think it did.

Q. And do you know to whom you sold it?  
[532—202]     A. Yes, sir.

Q. To whom?     A. Mrs. Elizabeth White.

Q. That is his mother?     A. Yes, sir.

Q. And do you remember acknowledging the deed—making the deed and acknowledging it before a notary public?     A. I don't remember.

Q. You were living in Orofino at that time, were you not?

A. No, sir, not at that time; we were living in Lewiston; we moved to Lewiston shortly before that.

Q. And have you any recollection of making a deed to Mrs. White of that property?

A. I don't remember. I suppose we did, because she has the deed to it, but I don't remember about it.

Q. Do you remember of appearing before a notary public and acknowledging the deed?

A. I don't remember.

Q. Did you ever give your husband—or anybody else but your husband the authority to sell any property for you?     A. No, sir.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Mrs. Mamie P.



(Testimony of Mrs. Mamie P. White.)

White, dated April 25th, 1904, the nonmineral affidavit of Mamie P. White, the notice of publication, the testimony of Mamie P. White given on final proof July 14th, 1904, the cross-examination of the same (all of which papers have been identified by the witness Mamie P. White), the testimony of the witnesses at final proof, the Receiver's Receipt and the Register's Certificate, dated July 14th, 1904, being the files of the Land Office relating to the entry of Mamie P. White, a certified copy of the patent, dated the 31st day of December, 1904, issued in the name of Mamie P. White, all for the north half of the south half of section 14, township 38 north, of [533—203] range 5 east, Boise meridian.

Mr. TANNAHILL.—The defendants waive any further identification of the papers, but severally object to each and all of the documents offered in evidence as the same applies to cases 388 and 407, upon the ground that they are irrelevant, incompetent and immaterial, the entry not having been referred to in these two actions. And the defendants severally object to all of the papers in relation to the final proof, consisting of the proof of publication, the testimony of claimant, Mamie P. White, and the cross-examination of the claimant, the testimony of William Dwyer, a witness for the claimant, and the cross-examination of William Dwyer, the testimony of Edwin Bliss, a witness for the claimant, and the cross-examination of Edwin Bliss, the affidavit of Mamie P. White in support of her application to purchase the land; upon the ground that



(Testimony of Mrs. Mamie P. White.)

they relate to the final proof and matters occurring subsequent to the filing of the initial papers, and they are irrelevant, incompetent and immaterial. And the defendants severally move to strike out all of the evidence of the witness in so far as it relates to bills No. 388 and 407, upon the ground that it is irrelevant, incompetent and immaterial, the entry not having been referred to or involved in these two actions.

Said documents were thereupon marked by the Reporter as Exhibits 9, 9A, 9B, 9C, 9D, 9E, 9F, 9G, 9H, 9I, 9J, 9K, 9L, 9M, and 9N.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mrs. White, did you have any contract or agreement with George H. Kester, William F. Kettenbach, or William Dwyer, prior to your filing upon this tract of land, that you would convey the land to them?     A. No, sir.

Q. Did you have any contract or agreement with anyone that you would convey the land to them, or any part of it, prior to your filing upon the land? [534—204]     A. No, sir.

Q. Did you have any contract or agreement that you would convey the land to them prior to making your final proof?     A. No, sir.

Q. How long after you made your final proof was it that you sold the land to Mrs. Elizabeth White?

A. Why, I think about three years—three or four.

Q. Then the affidavit that you signed when you

(Testimony of Mrs. Mamie P. White.)

filed your sworn statement, to the effect that "I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that statement was true at the time you made it, was it?      A. Yes, sir.

Q. And true at the time you made final proof?

A. Yes, sir.

Q. And it is true at the present time?

A. Yes, sir. [535—205]

**[Testimony of Charles S. Myers, for Complainant.]**

CHARLES S. MYERS, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Charles S. Myers?

A. Yes, sir.

Q. Where do you reside, Mr. Myers?

A. Fraser.

Q. Idaho?      A. Yes, sir.

Q. How long have you resided in Fraser?

A. I have resided in that country about fourteen years, maybe fifteen.

Q. What was your occupation in October, 1905?

(Testimony of Charles S. Myers.)

A. I was farming, and I ain't sure whether I had a sawmill at that time or not; I don't believe I did. I wouldn't say positively whether I had a sawmill at that time or not.

Q. Since then you have acquired a sawmill if you didn't have it at that time, have you?

A. Since then I have, yes, sir, if I didn't have it at that time.

Q. What kind of a sawmill is it?

A. It is a small mill—what is called a pony sawmill.

Q. How many men does it take to run it?

A. I generally have about twelve to fifteen men there when I am running.

Q. You took up a claim under the timber and stone act in October, 1905, did you not?

A. About that time.

Q. I show you timber and stone land sworn statement, dated October 30, 1905, signed Charles S. Myers, and ask you if you signed that paper about the date it bears and filed it in the land office at Lewiston?

A. I believe I did; that is my signature. [536—206]

Q. I show you notice of publication of Charles S. Myers, dated October 30, 1905, and the nonmineral affidavit of Charles S. Myers, dated October 30, 1905, and signed Charles S. Myers, and ask you if you signed that paper and filed the two of them in the land office on the date they bear?

A. I expect I did; that is my signature.



(Testimony of Charles S. Myers.)

Q. I show you the testimony of Charles S. Myers, given on final proof, at the land office, January 22, 1906, and the cross-examination thereof, and ask you if those papers were signed by you? A. Yes, sir.

Q. Mr. Myers, what induced you to take up a timber claim?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness in relation to his taking up a timber claim, in so far as it relates to bills 406 and 388, upon the ground that it is incompetent, irrelevant and immaterial, his entry not being involved in either of those actions.

A. Why, well, I hardly know how,—in the first place there was other people taking up claims there, and I was acquainted with this man Steffey, and he was locating, and I told him I wouldn't mind taking up a claim myself.

Q. That was Harvey J. Steffey, was it?

A. Harvey J. Steffey, yes, sir.

Q. And do you remember whether you got a relinquishment from Mr. Steffey?

A. Mr. Steffey,—I don't know how the relinquishment was got, but it was through a relinquishment that I got the claim.

Q. When you made that statement to Mr. Steffey, what arrangement did you make for taking a timber claim?

A. Well, I don't remember just how long it was afterwards, but he came to my place afterwards and told me that he could get me a claim.

Q. Now, state the terms and conditions upon which

(Testimony of Charles S. Myers.)

you could get your claim. [537—207]

A. He told me he could get me a claim; as near as I can remember now, he said it wasn't a very good claim, but he said I could make \$150.00 out of it anyway.

Q. Who was to pay the expenses of taking up this timber claim?

A. I told Mr. Steffey that I didn't have any money at that time, and he said he could let me have the money.

Q. What was your understanding as to what you were to do to make this \$100.00 that you speak of?

A. The \$100.00 or the \$150.00, do you mean?

Q. The \$150.00.

A. Why, I supposed if I wanted to I could sell the claim then and get the money out of it.

Q. And was that your understanding as to what you were to do with it?

A. I understood that I could sell it, yes. He just told me I could make \$150.00, and of course I knew there was timber claims changing hands.

Q. You came down to Lewiston to make your application? A. Yes, sir.

Q. Did you come alone? A. I believe I did.

Q. Did you meet Mr. Steffey here?

A. No, I don't believe Mr. Steffey was here at that time. I couldn't say positively as to that now.

Q. And who paid your expenses down to Lewiston before you filed?

A. Well, Mr. Steffey let me have some money.

Q. How much money did he let you have?

A. I think,—I couldn't say; it wasn't very much

(Testimony of Charles S. Myers.)

at that time though.

Q. Was it \$20.00?

A. It seems to me it was about \$20.00 now; I couldn't say, but I believe it was about \$20.00 he let me have.

Q. Was the \$20.00 to pay your expenses down here and your filing [538—208] fees?

A. It was to help anyway.

Q. I want to know if that wasn't what it was given to you for? A. Yes, I believe it was.

Q. Do you know who prepared this sworn statement for you that I have shown you?

A. No, I don't.

Q. Did you have that before you came away from your home? A. No, I don't think so.

Q. Who piloted you around to the land office when you got here?

A. I wouldn't say absolutely now; Mr. Steffey might have been with me, and if there was anybody with me it was him.

Q. Do you remember going to any lawyer's office to have those papers prepared?

A. I believe we did go into a lawyer's office in the old land office building.

Q. You say we. Who was it?

A. Well, whoever was with me; it must have been Steffey if it was anybody.

Q. Do you know where you met the party that took you to the land office? A. No, I don't.

Q. Were you in the Lewiston National Bank that day?



(Testimony of Charles S. Myers.)

A. I don't know whether I was in the bank or not; I couldn't say.

Q. Your wife took up a timber claim, did she?

A. Yes, sir.

Q. And what is her name?

A. Jannie Meyers.

Q. Did she take up a claim before you did, or after? A. No, it was some time afterwards.

Q. You returned to your home after filing these papers, and do [539—209] you remember being notified when the time came for you to make your final proof?

A. Why, I remember of getting a paper with the notice in.

Q. And had you talked with Mr. Steffey between the time that you made your filing and the time for making your proof?

A. I couldn't say that I did, nor I couldn't say that I didn't, because I have forgotten.

Q. Well, when you started away from your home to make your final proof, did you have the money with which to make proof? A. No, sir.

Q. Had you made any arrangements for it?

A. Yes, Mr. Steffey was to let me have the money.

Q. That was the original arrangement?

A. Yes, sir.

Q. You hadn't talked to him about it since the first time?

A. I couldn't say now; I might have had some conversation before I come down to prove up, I couldn't say, but I know it was understood he was to get me the money.

(Testimony of Charles S. Myers.)

Q. That was understood before you filed on it?

A. Yes, that he was to let me have the money to carry me through, if I didn't have it.

Q. And you came to the land office and made your final proof?      A. Yes, sir.

Q. Now, where did you get the money that you made your final proof with?

A. Mr. Steffey gave me the money at the Annex at the Bollinger Hotel.

Q. That was the morning that you made your proof?      A. It was the day I made my proof.

Q. Do you remember whether he gave it to you in cash or by check?

A. I believe, as near as I can remember, it was gold coin he gave me.      [540—210]

Q. Do you remember how much it was?

A. I don't remember positively, but I believe it was a little better than \$400.00.

Q. And you went right from the Bollinger Hotel to the land office and paid that money and made your proof?      A. And made my proof, yes, sir.

Q. Did you ever get any money for your claim?

A. Yes, sir.

Q. How much?

A. I got in the neighborhood of \$150.00, maybe a little bit better; I think it was a little bit over, but right at \$150.00.

Q. Who gave you that?      A. Mr. Steffey.

Q. When was that given you?

A. That was given to me after I had deeded the property.

(Testimony of Charles S. Myers.)

Q. Did he give you any money besides the \$400.00 the day you made your proof?

A. I don't remember what day it was that I transferred the property, whether it was the same day or not, but I got the money after,—well, I couldn't say positively when I did get the money, but I know the transaction,—he carried it out.

Q. Who paid your expenses down to Lewiston when you came to make your proof?

A. I couldn't say as to that; perhaps I paid it myself; I couldn't say.

Q. Are you sure about that?

A. No, I am not positive about that.

Q. Wasn't your arrangement with Mr. Steffey that he was to pay all your expenses?

A. Well, Mr. Steffey said he would let me have the money to pay my expenses, and, of course, about coming down, I wouldn't have considered that anything.

Q. To whom did you deed the property?  
[541—211]

A. I believe it was to Kester and Kettenbach.

Q. William F. Kettenbach and George H. Kester?

A. I don't know their initials.

Q. You didn't have the money with which to purchase a claim when you entered into this arrangement with Mr. Steffey and you told him so. Is that correct?

A. That is correct; I didn't have the money.

Q. Do you remember whether you spent even a cent of your own money for expenses in coming to



(Testimony of Charles S. Myers.)

the land office to make your sworn statement and filing it, and back to your home, and then down again to make your final proof?

Mr. TANNAHILL.—We object to that on the ground that it calls for a conclusion of the witness and not a statement of the fact. If the money belonged to him it was his, whether he borrowed it or how he got it.

A. I couldn't say positively, but I don't know but what I did have some of my own money when I come down to make my final proof, but I couldn't say positively, for I do not know.

Q. I am asking you whether you paid any of your expenses down here, or whether Steffey gave you the money for that purpose?

A. When I come down to make my final proof, I don't believe Mr. Steffey was with me, and I must have paid my own way down.

Q. Did he give you back the money that you spent?

A. I couldn't say as to that.

Q. Do you remember telling me, Mr. Myers, at Moscow, last fall, when you appeared before the grand jury, that you didn't have to put up a cent of your own money for anything, and that you had no expenses at all in taking up this claim?

A. I don't remember now; it might have been that Mr. Steffey did pay all my expenses, but I could not positively say.

The SPECIAL EXAMINER.—Read that question over. I don't believe you answered the question that Mr. Gordon asked you. [542—212]

(Testimony of Charles S. Myers.)

Mr. GORDON.—Q. Do you remember whether you made that statement to me?

A. I don't remember now.

Q. Do you know whether or not it is a fact that you didn't pay any of your expenses of taking up that claim, and that Steffey gave you the money for every expense you had in connection with it?

Mr. TANNAHILL.—We object to that as leading and suggestive, and cross-examination, and repetition.

A. I could not positively say, because he might have paid all my expenses, because I have forgotten.

Q. Wasn't it your understanding when you first talked with him that he was to put up the money for every expense?

A. I don't know that it was just positively mentioned every expense, but he told me he would furnish me the money to pay my expenses.

Q. Did your wife have any independent income, Mr. Myers, or did she only have such money as you furnished her?

A. Why, not any more than she might have some money from boarding some men there at the mill.

Q. Do you know whether—

A. I think at that time she was boarding a school teacher; a school teacher was boarding with us.

Q. How long had the school teacher been there in January, 1906?

A. Why, I couldn't tell, but the school must have commenced along about some time in September or the first of October, and she would be there from that time.

(Testimony of Charles S. Myers.)

Q. Do you know what board she paid?

A. No, I don't; perhaps about \$3.00 a week.

Q. About \$3.00 a week?

A. I don't think it was more than that; it might have been.

Q. Do you know whether or not the mill was running at that time?

A. No,—what time was that in the year?

Q. January, 1906. [543—213]

A. In January the mill wasn't running; it wasn't running that early in the spring.

Q. When was the mill running?

A. I didn't start up the mill until in the spring perhaps, perhaps in April, some time in April.

Q. And how many men boarded at your house at a time, if you had any mill then?

A. Well, I couldn't say, because sometimes I had some of the men hired that lived around there and they would stay at home, and sometimes they would just be there for dinner, and a few of them would eat there all the time.

Q. I am speaking now of along in March, April, May and June, 1906.

A. Well, I don't know what date I started the mill; I didn't start up in the spring until the frost was out of the logs, and I couldn't say as to just how many men was boarding with me, because some of them boarded with me and some didn't.

Q. None of the men lived with you, did they?

A. Some of the men did, stayed there all the time and worked there.



(Testimony of Charles S. Myers.)

Q. Did you charge them for their rooms?

A. No, just for the board; they had a bunk-house.

Q. What board did they pay apiece, about?

A. Fifty cents a day.

Q. Such as were there?      A. Yes.

Q. Do you remember how many men you had employed at the mill in the spring of 1906?

A. No, I couldn't tell.

Q. Couldn't you approximate it?

A. Well, it would run along somewhere about twelve or fifteen men.

Q. This \$150.00 that you say Mr. Steffey gave you, did he give it to you all at one time, or had he made advances to you from time to time? [544—214]

A. I don't remember.

Q. Did the whole transaction turn out as you understood it would from your arrangement with Mr. Steffey when you first talked with him?

A. It did.

Q. Did you ever repay Mr. Steffey the money that you borrowed from him, or was it just considered as the deal being closed when you got the \$150.00, and that would cancel all of it?

A. Well, as near as I can remember, he brought me a statement with all the transactions settled up in it, so much taken out for money he had advanced me, and he gave me the balance.

Q. I will ask you whether or not you would have sold that claim to anybody else but Mr. Steffey had they wanted to buy it?

A. I wouldn't without first giving Mr. Steffey a chance.

(Testimony of Charles S. Myers.)

Q. You felt under obligation to him?

A. I felt under obligation because he had helped me out, and I felt under obligation to give him the first chance.

Q. You felt that Mr. Steffey had a prior right?

A. Yes, sir, because he had helped me.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Charles S. Myers, dated October 30, 1905; the nonmineral affidavit, bearing the same date; the notice for publication; the testimony of Charles S. Myers, given on final proof, and the cross-examination thereof, dated January 22, 1906, all of which have been identified by the witness; the testimony of the witnesses on final proof; the receiver's receipt and the register's certificate, dated January 22, 1906; certified copy of patent issued to Charles S. Myers, dated September 11, 1907; and the other papers attached, from the land office files, all concerning the entry of Charles S. Myers to the northwest quarter of section 29, township 38 north of range 6 east, Boise meridian. We also offer certified copy of a deed made by Charles S. Myers, and Jan-  
nie, his wife, conveying to William F. Kettenbach and George H. Kester, in consideration of \$1,000.00, the northwest [545—215] quarter of section 29, township 38 north of range 6 east, Boise meridian, acknowledged before Fred H. Judd, Justice of the Peace for Nez Perce County, and recorded at the request of the Lewiston National Bank March 26, 1906; also the certificates of recordation attached.

Said above mentioned documents were thereupon



(Testimony of Charles S. Myers.)

marked by the Stenographer as Exhibits 10A, 10B, 10C, 10D, 10E, 10F, 10G, 10H, 10I, 10J, 10K, 10L, 10M, 10N, 10-O, 10P, and 10Q.

Mr. TANNAHILL.—The defendants severally waive any further identification of the documents just offered in evidence, and severally object to the introduction of any and all of the documents just offered, in so far as they relate to bills 406 and 388, upon the ground and for the reason that the entry is not involved in either of these actions, and they are irrelevant and incompetent and immaterial. And the defendants severally object to the introduction in evidence of all of the final proof papers, and especially the testimony of claimant Charles S. Myers, and the cross-examination of the claimant Charles S. Myers, the testimony of the witness Dominick Cameron, and the cross-examination of the witness Dominick Cameron, the testimony of the witness Harvey J. Steffey, and the cross-examination of the witness Harvey J. Steffy, proof of publication, upon the ground that they are incompetent, irrelevant and immaterial. And the defendants further severally object to the introduction of the papers in evidence, upon the ground and for the reason that all of the papers are not offered, and the following document appearing among the files is not offered in evidence, to wit: “Department of the Interior, United States Land Office. Lewiston, Idaho, January 26, 1906. T. & S. No. 1735. Charles S. Myers. I hereby certify that the Notice of Intention to Make Proof furnished to the Special Agent was lost



(Testimony of Charles S. Myers.)

or destroyed when the Land Office was removed to its new quarters, and cannot be attached hereto. That this claim is in rough, broken mountains, heavily timbered, where the soil is thin and the land worthless for agriculture; that no complaints of fraud have been received from this neighborhood, [546—216] and that I know of no fact which tends to impeach the good faith of this entryman. In witness whereof, I have hereunto set my hand, the day and year first above in this certificate written.

H. V. A. FERGUSON,  
Special Agent G. L. O.”

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Myers, your transactions with Mr. Steffy were simply that if you wanted to borrow the money, or didn't have the money yourself with which to pay for the land, he would loan you the money?

A. That was the understanding, yes.

Q. That was the understanding? A. Yes.

Q. You had no contract or agreement whereby you was to sell him the land, at the time you made your filing, did you? A. I had not.

Q. Or at the time you made your final proof?

A. No, sir.

Q. You had no contract or agreement that you was to sell the land to anyone, at the time you made your filing, did you? A. I did not.

Q. And had someone else offered you \$500.00 more than what Mr. Steffey had offered you, and Mr. Steffy wouldn't give that amount, you would have felt

(Testimony of Charles S. Myers.)

perfectly free to sell it to the other parties, would you?

A. I would have, by putting up the money he had loaned me.

Q. Then, your affidavit that you made at the time you filed your sworn statement, "That I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or [547—217] persons whomsoever, by which the title I may acquire from the Government of the United States may insure in whole or in part to the benefit of any person except myself," that was true at the time you made it, was it? A. Yes, sir.

Q. And at the time you made final proof?

A. Yes, sir.

Q. And it is still true? A. Yes, sir.

Q. How long after you made your final proof was it that you sold the land?

A. I don't know, but it was shortly afterwards.

Q. I believe you made your final proof the 22d of January, 1906, your final proof papers show that you made your final proof then? A. Yes.

Q. That is about the time you made your final proof? A. Yes, sir.

Q. I will show you the original deed, and ask you if that is your and your wife's signatures to that deed. A. Yes, sir.

(Testimony of Charles S. Myers.)

Q. The date of it is the 12th of March, 1906?

A. Yes, sir.

Q. That is about the time you sold your land, is it?

A. Yes, sir.

Q. And about the time you made your settlement with Mr. Steffy, and paid him back his money that you had borrowed from him?

A. Yes, it was all settled up in one transaction.

Q. I will ask you to look at this affidavit and state whether or not that is your signature to it.

A. Yes, sir.

Q. And glancing over the affidavit, it is substantially the same as your sworn statement, that you made no contract or agreement to sell your land, prior to the time you made your final proof. That affidavit [548—218] is true, is it?

A. Yes, sir, I hadn't made any contract with anybody.

Q. Who requested you to sign this affidavit?

A. That there?

Q. Yes.

A. Why, I don't know, unless it was Mr. Steffy. He was the man that—

Q. Do you remember that Mr. Steffy brought you the affidavit to sign?

A. I think he did; I believe he had Mr. Todd with him. I couldn't say; it has been so long that I have forgotten.

Q. Well, give us your best recollection.

A. I believe it was him that was with him.

Mr. TANNAHILL.—The defendants severally re-



(Testimony of Charles S. Myers.)

quest that the affidavit just identified be marked as Defendant's Exhibit "A," for identification.

The above mentioned affidavit was thereupon marked by the stenographer as "Defendants' Exhibit 'A,' for identification."

Q. I believe you said you got a relinquishment from Mr. Steffy, did you, Mr. Myers?

A. I got the relinquishment. I don't know who he—he got the relinquishment for me.

Q. You don't know whose relinquishment it was, do you?     A. No, I don't; I have forgotten.

Q. Did you file on the land that was described in this relinquishment, or do you remember?

A. I don't remember, but then it was understood that that was it, and I am satisfied it was.

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Myers, this affidavit that you have identified, have you ever read that affidavit?

A. Well, sir, I don't know now.

Q. Do you know what is in the affidavit? [549—219]     A. No, I don't; I don't remember now.

Q. But Mr. Steffy just brought you this paper, with a notary public, and asked you to sign it and swear to it?

A. I couldn't say whether I read it at that time or not.

Q. Was there any discussion about the affidavit?

A. I don't believe there was.

Q. There was nothing said—you just signed it because Mr. Steffy asked you to?

(Testimony of Charles S. Myers.)

A. I couldn't say as to that; I don't remember whether I read it or not.

Q. Did you ever make any other affidavit to Mr. Steffy, that you know of?     A. Not that I know of.

Q. Do you know what the contents of this affidavit is?     A. No, I haven't read it; I don't know.

Q. And you have no recollection of any discussion about it?     A. I haven't now, no.

Q. You don't know what the affidavit pertains to, do you?     A. I don't believe I do.

Mr. GORDON.—That is all.

Mr. TANNAHILL.—That is all. [550—220]

**[Testimony of Mrs. Jannie Myers, for Complainant.]**

Mrs. JANNIE MYERS, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mrs. Jannie Myers, are you?

A. Yes, sir.

Q. And you are the wife of Mr. Charles S. Myers, who has just testified?     A. Yes, sir.

Q. And you reside at home with him and have ever since he has lived in that part of the country where you now reside, have you?     A. Yes, sir.

Q. Do you remember when the sawmill in which your husband is engaged began operations?

A. I think it was about five years ago.

Q. Well, do you remember whether it was in operation when he filed on his timber claim, or when you filed on yours?     A. Yes.

(Testimony of Mrs. Jannie Myers.)

Q. Or were you just ranching then?

A. It was when I filed on mine.

Q. Was it when he filed on his? Had it started up then?

A. Well, I think it had. I couldn't say for sure, but I think it had.

Q. Now, he made his application in the fall, in October as I remember, and he made his final proof the latter part of January. The mill didn't run during those months, did it? A. No, sir.

Q. And had the mill—had you all had the mill prior to that time? A. Yes, I think so.

Q. What I mean is this: Did you just get it the fall before you purchased your claim, and that it hadn't run that fall, and you began the [551—221] next spring; or had you had it the summer before?

A. Well, I am not sure, but I think we had run it the summer before—I am not sure.

Q. Who talked with you about taking up a timber claim, Mrs. Myers? A. Mr. Steffey.

Q. Mr. Harvey J. Steffey? A. Yes, sir.

Q. And how long did he talk to you about it before you took up the claim? A. How long before?

Q. Yes. Oh, I mean approximately. Was it a few days, or a month, or what?

A. Oh, it must have been—I think it must have been four or five months.

Q. Well, did he go to your house to see you about it? A. He came up there, yes.

Q. Now, what did he say to you?

A. Well, I just asked him to get me a timber claim.



(Testimony of Mrs. Jannie Myers.)

Q. And what was said?

A. And he said that he would see if he could?

Q. And was anything said about money at that time to purchase the timber claim?

A. No, there wasn't anything said at that time.

Q. Did you have the money with which to purchase a timber claim?      A. No.

Q. Did you ask him what it would cost, or have any understanding as to how you would take this claim up?

A. Well, no; I didn't talk with him. We talked at home about it among ourselves. I knew how my husband had got his.

Q. You knew how he had got his, did you?

A. Yes, sir. [552—222]

Q. You knew the arrangements he had with Mr. Steffey about his?      A. Yes.

Q. And you discussed that, and was it your idea to get one the same way?      A. Yes.

Q. And did you go with your husband when he made the deed and sold his claim?

Mr. TANNAHILL.—We object to any evidence in relation to the deed and the filing upon or proving up upon the timber claim of Mrs. Jannie Myers, in so far as it relates to actions 388 and 407, or either of those actions, upon the ground that the entry of Mrs. Myers is not involved in either of these actions, and the evidence is irrelevant, incompetent and immaterial.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. And you knew that he had

(Testimony of Mrs. Jannie Myers.)

sold his claim?      A. Yes, sir.

Q. And you knew what he got for it?

A. Well, I knew at the time.

Q. That's what I mean.      A. Yes.

Q. And did you make a similar arrangement with Mr. Steffey?

A. No. There wasn't hardly anything said between Mr. Steffey and I.

Q. It was transacted mostly through your husband?      A. Yes, mostly.

Q. Now, when you went to take up your claim, who went to the land office with you?

A. Who went to the land office when I took the claim?

Q. Who came down to Lewiston with you to go to the land office?

A. Well, my husband did—no, he didn't, either, I don't think. Let me see, when I took the claim? No, he didn't come down then. [553—223] Miss Rundell came down—Miss Bertha Rundell—and Mr. Steffey went to the land office with me.

Q. Now, who paid the traveling expenses of that journey?      A. We did.

Q. Who is "we"?      A. Why, myself.

Q. Did Mr. Steffey give you the money to pay those expenses?      A. No, sir.

Q. You are sure of that?

A. I feel quite sure. I got the money from home.

Q. Do you know whether Mr. Steffey gave you the money before you left home or not?

A. Well, now, I don't think he did.

(Testimony of Mrs. Jannie Myers.)

Q. I show you the timber and stone lands sworn statement of Jannie Myers,— A. What is it?

Q. I show you the timber and stone lands sworn statement of Jannie Myers, dated March 19th, 1906, and ask you if that is your signature to the same, and whether you filed it in the land office at Lewiston on or about the date it bears?

A. Yes; that is my signature all right.

Q. And you filed it in the land office?

A. Yes, sir.

Q. I show you the nonmineral affidavit of Jannie Myers, of the same date, and ask you if that is your signature, and if you filed that at the same time?

A. Yes, sir.

Q. That was on your first trip to Lewiston?

A. Yes, sir.

Q. I show you an affidavit of Jannie Myers of the same date, sworn to before T. H. Bartlett, Register, and ask you if that is your signature, and if you filed that the same day? [554—224] A. Yes, sir.

Q. I show you the testimony of Jannie Myers, given on final proof June 6th, 1906, and ask you if that is your signature to that? A. Yes, sir.

Q. Is that your signature to the cross-examination, taken at the same time? A. Yes, sir.

Q. Mrs. Myers, do you remember where you had the sworn statement and the other papers that you filed in the land office on the first visit there, prepared? A. What is the question, please?

The last question was repeated by the Reporter.

A. No, sir, I didn't.



(Testimony of Mrs. Jannie Myers.)

Q. Did Mr. Steffey furnish you those papers?

A. Well, I don't remember whether he did or not.

Q. Now, when you filed those papers in the land office, do you remember whether you had any expenses to pay that day?

A. I don't think—the car fare, and such as that, do you mean?

Q. No; I mean at the land office—the filing fee and the publication, etc.? Did you pay any expenses at the land office that day?

A. Well, I think I did. I am not sure.

Q. Well, have you an idea of what the expenses were? A. No, sir, I haven't.

Q. Did Mr. Steffey go to the land office with you?

A. Yes, sir.

Q. Well, do you know whether he paid the expenses or not—the filing fee and the amount requisite for the publication—advertising?

A. No, sir, I don't remember whether he did or not.

Q. Do you remember when you came to make your final proof and pay for this land?

A. Yes, sir. [555—225]

Q. Who notified you as to the time?

A. I suppose it came from the land office.

Q. Had you seen Mr. Steffey in the meantime?

A. I don't remember of it.

Q. Who did you come to Lewiston with on that occasion? A. When we proved up?

Q. Yes.

A. That was—well, the same ones; Mr. Steffey and my husband and Miss Rundell.

(Testimony of Mrs. Jannie Myers.)

Q. Now, who paid the expenses of that trip?

A. Well, I don't remember now who did.

Q. Did you?

A. I don't remember whether I did or not.

Q. Did you have an understanding with Mr. Steffey that he was to pay all the expenses and to furnish the money to take up this claim?

A. No, sir; I never had any understanding with him at all.

Q. Well, did your husband make that arrangement with him for you?     A. No, he didn't.

Q. You know that is the arrangement your husband had to take up his claim, isn't it?

A. Yes, I think it was.

Q. And didn't I understand you to say that you had the same arrangement?

A. Well, I hadn't made any arrangements with Mr. Steffey about it.

Q. Well, who did you make your arrangements with about it?     A. Well, we just talked at home.

Q. Who was at home?—your husband and yourself?     A. Yes, sir.

Q. Well, wasn't it your understanding that you were to take up a claim on the same conditions that your husband did?     A. Yes, sir. [556—226]

Q. And you knew what the conditions were that he took his up on?

A. Well, I did at the time, yes.

Q. And you knew Mr. Steffey was to furnish the money and to pay all his expenses?

A. Well, I don't know whether he was to furnish

(Testimony of Mrs. Jannie Myers.)

it all or not.

Q. How much money did you pay into the land office when you made your final proof?

A. Well, I think it was \$200.00. I am not sure.

Q. And where did you get that money?

A. Well, I don't remember now where I did get all of it. I think I had part of it myself.

Q. Who did you get the rest from?

A. I think from Mr. Steffey.

Q. Did you get it down here at Lewiston?

A. I think I brought part of it from home, and I think he gave me part of it down here.

Q. Now, do you know how much it was that he gave you?     A. No, sir, I don't.

Q. Have you any idea?

A. Well, I haven't much idea.

Q. Did you give him a note to secure it?

A. No, sir.

Q. Did you pay him any interest on it?

A. No, sir.

Q. Did you ever repay him?

A. Well, I suppose he got his pay after the claim was sold.

Q. Have you any remembrance of how much money you brought from home with you?

A. No, sir, I don't remember.

Q. Well, can't you approximate it? Was it \$5.00, or \$10.00, or \$20.00, or \$30.00, or \$40.00?

A. Well, it has been so long ago that I don't remember. [557—227]

Q. How long after you made your proof did you



(Testimony of Mrs. Jannie Myers.)

negotiate for the sale of this land?

A. How long before I sold?

Q. Yes. I asked you how long after you made proof before you sold?

A. Well, it was perhaps six weeks, as near as I can remember.

Q. And who did you talk with about it?

A. Mr. Steffey.

Q. Who else?

A. Nobody that I remember of.

Q. Did you ever talk with Mr. William Dwyer about it?

A. He came by—I think he came by one evening with Mr. Steffey.

Q. And was Mr. Dwyer there when the deed was made?

A. He was there when some papers were signed, I think.

Q. Well, at your home?      A. Yes, sir.

Q. What papers did you sign, besides a deed?

A. Well, I don't know whether I signed any or not. (Laughing.)

Q. Did you go to the office of Mr. Judd to acknowledge this, or did Mr. Judd come to the house?

A. I think I went to Mr. Judd's.

Q. Now, do you remember who went with you?

A. I don't remember of anybody going only Mr. Myers.

Q. Was the deed there, or had somebody brought it to the house before you went to Mr. Judd's?

A. Well, I think it was brought to the house.

(Testimony of Mrs. Jannie Myers.)

Q. Do you remember who brought it?

A. Well, I think that must have been Mr. Steffey.

Q. Well, what was the occasion that Mr. Dwyer came there with him?     A. Well, I don't know.  
[558—228]

Q. Do you remember them being there together relative to this claim?     A. No, sir.

Q. Have you any idea of the occasion that Mr. Dwyer and Mr. Steffey were there together?

A. No, sir.

Q. When did you get your money out of this claim?

A. Well, it was soon after it was sold, perhaps a week or ten days.

Q. Did you get any of it before you made the deed?

A. No, sir.

Q. Did you ever get a check from Mr. Steffey?

A. I don't remember getting any check.

Q. Did Mr. Steffey pay you for this property?

A. Yes, sir.

Q. Did he pay you in cash?

A. Yes, sir, I think it was.

Q. How much money did he give you?

A. Well, I think it was about \$125.00—\$120.00 or \$125.00, perhaps.

Q. And is that what you understood he was to give you when he entered the claim?

A. Well, there wasn't any understanding just how much I would get.

Q. Was it approximated how much you would get?

A. He thought about that—that I could get.

(Testimony of Mrs. Jannie Myers.)

Q. Do you know to whom you sold the property—the names of the parties in the deed?

A. Well, I think it was Kester and Kettenbach.

Q. Do you remember whether you read the deed or not?     A. No, sir, I don't. [559—229]

Q. Did the entire transaction turn out just as you expected that it would and understood that it would from the time you had your first talk with Mr. Steffey?

A. It turned out just about as we thought it would, yes.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Jannie Myers, the nonmineral affidavit, the notice for publication, the testimony of Jannie Myers given at the final proof and the cross-examination thereof, the affidavit of Jannie Myers, dated March 19th, 1906 (all of which papers have been identified by the witness), the testimony of the witnesses on final proof, the Receiver's Receipt and the Register's Certificate, the cross-examination of Jannie Myers at final proof, and the cross-examination of the witnesses at final proof, a certified copy of the patent, dated September 11th, 1907, issued to Jannie Myers; all relating to the entry of the west half of the southwest quarter of section 25, township 38 north, of range 5 east, of Boise meridian. We also offer a certified copy of the deed dated July 11th, 1906, between Jannie Myers, and Charles S. Myers, her husband, and George H. Kester and William F. Kettenbach, for a consideration of \$450.00, conveying the west half



(Testimony of Mrs. Jannie Myers.)

of the southwest quarter of section 25, township 38 north, of range 5 east, of the Boise meridian, acknowledged July 11th, 1906, before Fred. H. Judd, Justice of the Peace, recorded July 28th, 1906, at the request of the Lewiston National Bank.

Mr. TANNAHILL.—The defendants waive any further identification of the documents offered in evidence by the Government, but the defendants severally object to all of the documents offered in evidence, in so far as they relate to bills No. 406 and 388, upon the ground that the entry is not involved in these two actions, and they are irrelevant, incompetent and immaterial. And the defendants severally object to the introduction in evidence of any of the final proof papers in either of the actions, especially the affidavit of Jannie Myers, the testimony [560—230] of the claimant, Jannie Myers, and the cross-examination of the claimant, Jannie Myers, the testimony of the witness William Dwyer, and the cross-examination of the witness William Dwyer, the testimony of the witness Harvey J. Steffey, and the cross-examination of the witness Harvey J. Steffey; upon the ground that they are irrelevant, incompetent and immaterial, relating to matters occurring long after the filing of the sworn statement. And the defendants severally object to the introduction of any of the documents in evidence, upon the ground that it is not all of the documents relating to the entry, there appearing among the papers the following document:

(Testimony of Mrs. Jannie Myers.)

“Lewiston, Idaho, April 6, 1906.

“T. A. No. 1856.

“Jannie Myers.

“I hereby certify that I have made inquiry into this timber claim; that I am informed by the U. S. Postmaster at Fraser, Idaho, that claimant is a married woman, being the wife of a resident of Fraser who is well to do; that she is able to buy the land herself, and that in his opinion she is seeking to acquire title in good faith, and for her own individual use and benefit; and I further certify that I know of no reason why final receipt should not issue, if the proof papers are regular and satisfactory on their face.

“IN WITNESS WHEREOF I have hereunto set my hand, the day and year first above in this Certificate written.

“H. V. A. FERGUSON,  
“Special Agent G. L. O.”

Mr. GORDON.—Do you offer that?

Mr. TANNAHILL.—No; I am objecting to any of the papers because you didn't offer it.

Mr. GORDON.—As I remember it, I offered this, and this all goes together. I offered the notice for publication, and that is on the back of it.

Mr. TANNAHILL.—Well, the affidavit just read having been offered [561—231] in evidence by Mr. Gordon, U. S. Assistant Attorney General, the objection on the ground that all of the files wasn't offered is withdrawn.

Said documents were thereupon marked by the



(Testimony of Mrs. Jannie Myers.)

Reporter as Exhibits 11, 11A, 11B, 11C, 11D, 11E, 11F, 11G, 11H, 11I, 11J, 11K, 11L, 11M, 11N, 11-O, and 11P.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mrs. Myers, I believe you said you had no special arrangement with Mr. Steffey other than that he would loan you a part of the money or all of the money to purchase the claim, in case you wanted it, is that right?

A. Well, I don't know that we had that arrangement made. I don't remember of it. In fact, we didn't. Mr. Steffey and I didn't have much to say about it.

Q. You had no arrangements with Mr. Steffey that you would sell him the claim, or sell the claim to anyone, before you filed on it, did you?

A. No, sir.

Q. And you had no such arrangements before you made your final proof? A. No, sir.

Q. And you didn't understand that you was under obligations to sell the claim to Mr. Steffey, or to anyone else, at the time you filed on it, or at the time you made your final proof? A. No, sir.

Q. Then, your affidavit that you made at the time you filed your sworn statement, that "I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or



(Testimony of Mrs. Jannie Myers.)

contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government [562—232] of the United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true, was it?      A. Yes, sir.

Q. It was true at the time you made it, and at the time you made final proof?      A. Yes, sir.

Q. And it is still true?      A. Yes, sir.

Q. And the only sale you made of it was some six weeks after you made your final proof, when it was sold to Kester and Kettenbach?      A. Yes, sir.

Q. I will ask you, Mrs. Myers, to look at this deed I now hand you, and state whether or not that is your name and the name of your husband attached to the deed.      A. Yes, sir.

Q. And you read the deed before you signed it, did you?

A. Well, I don't remember now, but I suppose I surely did.

Q. You understood what you was signing?

A. Yes, sir.

Q. And that it was a deed to the land?

A. Yes, sir.

Q. I will ask you to look at the affidavit I now hand you, and state whether or not that is your signature to the affidavit.      A. Yes, sir.

Q. Just glance over the affidavit, and state whether or not you remember the circumstances of your signing that affidavit.

(The witness read said affidavit.)

(Testimony of Mrs. Jannie Myers.)

Q. Do you remember who brought this affidavit to you to sign?     A. No, sir, I don't.

Q. Do you remember of Mr. Steffey and Mr. Judd bringing the affidavit to you to sign?     [563—233]

A. Mr. Steffey and Mr. Judd, you say?

Q. Yes?

A. I don't remember Mr. Judd being there.

Q. Was Mr. Steffey there when you signed it?

A. Well, I don't remember whether he was or not.

Q. Do you remember the circumstances of your signing the affidavit?     A. No, sir, I don't.

Q. That is your signature, isn't it?

A. Yes, sir, that is my signature all right.

Q. But you don't remember the circumstances of your signing it?     A. No, sir.

Q. You remember that you signed your affidavit at the same time your husband signed a similar affidavit? There was two affidavits, and Mr. Judd and Mr. Steffey brought them to you to sign? Do you now remember the circumstance?

A. No, sir, I don't.

Q. This affidavit that you made is true, is it, Mrs. Myers?     A. Yes, sir.

Mr. TANNAHILL.—We ask that the affidavit just referred to be marked Defendants' Exhibit "B," for identification.

Said document was so marked by the Reporter.

Redirect Examination.

(By Mr. GORDON.)

Q. Do you remember seeing that affidavit before that Mr. Tannahill has just shown you?

(Testimony of Mrs. Jannie Myers.)

A. I don't remember it now, but I have seen it, because it is my writing.

Q. Well, do you remember whether or not you just signed it without reading it over?

A. Well, I don't remember whether I did or not.  
[564—234]

Q. As I understood you to say, you remember nothing of the circumstances? A. No, sir.

Q. Or the conversation which brought about the signing of this affidavit? A. No, sir.

At this time a recess was taken until two o'clock P. M. [565—235]

At two o'clock P. M. the hearing was resumed.

**[Testimony of Joel H. Benton, for Complainant.]**

JOEL H. BENTON, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

Redirect Examination.

(By Mr. GORDON.)

Q. Your name is Joel H. Benton? A. Yes, sir.

Q. Where do you reside, Mr. Benton?

A. Lewiston.

Q. How long have you resided in Lewiston?

A. About twenty-six years.

Q. You are a married man? A. Yes, sir.

Q. You are the father of William B. Benton?

A. Yes, sir.

Q. What was your occupation, Mr. Benton, in April, 1902? A. I was selling dry-goods.

Q. Do you remember taking up a claim under the timber and stone act in that year? A. Yes, sir.



(Testimony of Joel H. Benton.)

Q. I show you timber and stone land sworn statement, signed by Joel H. Benton, dated August 28, 1902, and ask you if you signed that statement and filed the same in the land office about the date it bears?     A. Yes.

Q. I show you the testimony of Joel H. Benton, given on final proof, November 21, 1902, and ask you if you signed that paper.     A. Yes, sir.

Q. I show you the cross-examination of Joel H. Benton at final proof. Is that your signature to that?     A. Yes, sir.

Q. Mr. Benton, who first spoke with you about taking up a claim under the timber and stone act?

Mr. TANNAHILL.—We object to the evidence of the witness in so far [566—236] as it relates to cases number 388 and 407, upon the ground that the entry is not involved in these particular cases, and on the further ground that it is incompetent, irrelevant and immaterial.

Mr. GORDON.—Q. Who first spoke with you about taking up a claim under the timber and stone act?

A. Why, I don't know; everybody was talking about it, the whole town, I don't know. W. A. Smith located me; I think I spoke to him myself.

Q. Had you located a homestead prior to that time?

A. I had started to take up one, yes, sir, gone on to one, but never filed on it.

Q. You had squatted on it?

A. Squatted, yes, sir.

(Testimony of Joel H. Benton.)

Q. What was your arrangement about squatting on the homestead claim?

Mr. TANNAHILL.—We object to that as incompetent, irrelevant and immaterial, a homestead claim not being involved in these proceedings or in any of the actions now under consideration.

A. Well, we had,—there was some arrangement on that homestead between Mr. Robnett and I.

Q. What was that arrangement?

A. Well, it was that he should,—I would take that up and go on to the land and stay there until it was surveyed, and he was to furnish the money for the expenses while I was there. And then after final proof I was to let him have the land.

Q. Where was this homestead that you refer to?

A. In 39—4.

Q. And near what town was it?

A. It wasn't near any town,—about forty miles from Orofino.

Q. And that was prior to your making your stone and timber entry? A. Yes, sir. [567—237]

Q. Now, did he furnish the money for you to carry out that arrangement with your homestead?

A. As far as I went he did, yes.

Q. Now, without me having to ask each question, you just tell the whole transaction about locating on that homestead, how you were to get the money, and who you were to take up there, and everything in connection with it.

Mr. TANNAHILL.—The same objection to all of this.

(Testimony of Joel H. Benton.)

A. That homestead has nothing to do with any of this timber business.

Mr. GORDON.—Q. I understand that, but I want to know about it just the same.

The SPECIAL EXAMINER.—Just answer the question the counsel asks you.

Mr. TANNAHILL.—It is understood that we have the same objection to all of this evidence, that it is irrelevant and immaterial.

The SPECIAL EXAMINER.—Yes, the objection may run all through this.

A. Of course, that has been eight years ago last spring, and I may not get it in just the same words I had it before, but I will give you the gist of it.

Mr. GORDON.—Q. Tell just as much of it as you remember, and the manner in which you remember it.

A. Well—

Q. Begin at the beginning of this transaction with Mr. Robnett.

A. Well, now, I don't know. I don't know whether I spoke to Mr. Robnett first or whether he spoke to me first, I don't remember that.

Q. Whichever one spoke to the other about it, tell what happened after that.

A. I think I may have said something to him about it, told him to find me some land where I could take it up, take up a homestead, and he said he thought may be he could find a place, and we talked it over several times. Then finally he called me in one day, into the bank, [568—238] into the place where he done his business, in the directors' room.



(Testimony of Joel H. Benton.)

Q. In what bank?

A. The Lewiston National Bank. And I was to go on to the land and do what should be done in the way of taking up a homestead, and he was to furnish the money for the expenses.

Q. Were you to go up with some other people, under a similar arrangement?

A. Yes, there was Mrs. Harris and her two daughters went up there at the same time.

Q. Was that Mrs. Mary Harris?

A. Yes, Mrs. Mary Harris.

Q. And what were her daughters named?

A. Jeanette and Ethel.

Q. Did they have claims near yours?

A. Yes, sir.

Q. The one you squatted on?

A. Yes, in 39—5.

Q. As I understand, this land that you were going to locate a homestead on wasn't open at that time.

A. No, sir, it wasn't open; we just squatted.

Q. Now, state how you were to get the money from Mr. Robnett to carry out this arrangement or agreement that you had with him.

A. Well, he gave me a check-book, and I was to draw checks on the bank.

Q. Did you have a deposit at the bank?

A. No, I had no deposit, no. I made out the checks so as to keep Mr. Robnett straight; I would put "Ex." on for expenses, so that he could keep it straight himself.

(Testimony of Joel H. Benton.)

Q. As I understand, he gave you a blank check-book?     A. Yes, sir.

Q. On the Lewiston National Bank?

A. Yes, sir. [569—239]

Q. You didn't have any deposit there?     A. No.

Q. And you were to draw these checks and sign them with your own name?     A. Yes, sir.

Q. And were you to pay your own expenses while you were locating on this homestead?

A. I kept my own expenses and drew checks for them; I kept track of them, I mean, and also Mrs. Harris' and her daughters.

Q. Did Mr. Robnett come up there during any of the time you were up in the timber on this homestead?

A. I believe he was there in August a little while, a few days.

Q. Was he up there just prior to the time you made your timber and stone filing?

A. I forget what time now, some time in August, though.

Q. Was it before you—?     A. Yes, sir, before.

Q. Did you have any conversation with Robnett then about taking up a timber claim?

A. It was very slight. Mr. Smith came in at the same time and—

Q. I am speaking now about Mr. Robnett.

A. I was going to tell you, Mr. Smith came in at the same time, and we all talked together, and Robnett mentioned, if Al. could find me anything to locate me on he would see me through. That is as

(Testimony of Joel H. Benton.)

far as I remember.

Q. Was that the only conversation you had with him about it?     A. Yes, sir.

Q. Was he to furnish you the money the same as for the homestead?

A. No, sir, there wasn't a word said about him furnishing me the money, wasn't a word said.

Q. Do I understand that you didn't take up a timber and stone claim at the request of Mr. Robnett?

A. No, sir, I did not. [570—240]

Q. What did Mr. Robnett say to you when he first talked with you in the presence of Mr. Smith about this timber and stone claim?

A. Just as much as I remember about him saying, and there wasn't anything more said about it, was that if Al. Smith found a claim for me he would see me through. Those was the very words he used.

Q. Did he tell you he would furnish you the money?

A. No, sir, he didn't say that at all.

Q. Do you remember testifying at the trial against William F. Kettenbach and others, at Moscow, in the fall of 1907?

A. I remember being there, yes, sir.

Q. You remember testifying, don't you?

A. Yes, sir.

Q. I am reading from case 1605 that was mentioned in the stipulation at the beginning of the hearing. Do you remember, Mr. Benton, whether this question was asked you: "What do you mean by saying he would put you through with it?" And



(Testimony of Joel H. Benton.)

that you answered: "He would furnish me the money to carry me through, while I was up there in the timber he came up there himself."

A. I don't remember those words. I remember that question was asked me, but that meant he was to furnish the money for final proof.

Q. That was the time though that you first talked with him about it? That was the time you talked with him in the presence of Mr. Smith?

A. Yes, sir.

Q. That was the first time that you talked with him about —?

A. The stone and timber.

Q. Then, he did tell you at that time that he would see you through with it and furnish the money for final proof?

Mr. TANNAHILL.—We object to that. The witness' answer in the other trial, just read by counsel, does not so state. The latter part of it is some conclusion that the witness might have drawn, but it does not state in his evidence in the other trial that that was what Robnett told him. [571—241] It does not state in his evidence in the other trial that Robnett told him he would furnish him the money.

Mr. GORDON.—Q. Is that right?

A. No, I think the way it was, the way I remember it, he said he would see me through, and that was all there was to it. There wasn't anything said about money. It was my understanding in my own mind that he was to furnish the money for final proof, but he didn't say that. He just said, "I will

(Testimony of Joel H. Benton.)

see you through."

Q. And had you ever been on this timber and stone claim? A. Before that, no, sir.

Q. Were you ever on the timber and stone claim before you filed on it?

A. Never was, no, sir, not entirely on it; I was out near it, but never on it.

Q. Were you on the land before you made proof?

A. I went down, Al. Smith took me out one time, but it rained all day, and when we got pretty close to *he* he said, "It's no use going any further, because it is almost dark," and I was sick at the time, and he said, "It's just like this," he says, "there's no use in going," and so we didn't go.

Q. Then, you came down to Lewiston to make your application, to file on this timber and stone claim, did you?

A. I will tell you how it was, Mr. Gordon. I cut my foot right in there (indicating), and I was laid up for two months, and I had to come out from there. That was before I filed on the timber at all. It bled like a stuck pig, you know, and I couldn't walk on it, and I had to come out, and it laid me up for two months. I could hobble around on crutches, was all.

Q. You finally came down to Lewiston?

A. On account of my foot being cut, yes.

Q. And you filed on your timber and stone claim?

A. Yes, sir. [572—242]

Q. You filed the sworn statement you have identified here? A. Yes, sir.

Q. Do you remember how much the filing fee and



(Testimony of Joel H. Benton.)

the expenses incidental to that filing was?

A. I don't remember now.

Q. Well, approximately.

A. I can't think now; I don't remember.

Q. You know you paid some fee when you filed?

A. Yes, sir. I forget whether it was \$16.00 now, or what it was.

Q. Where did you get the money to pay that?

A. Well, the filing fee, I had to pay my own expenses going out there to the timber, and I think Mr. Robnett furnished the money for the filing fee.

Q. What do you mean by furnishing your own money going out to the timber?

A. Well, of course, we had some expenses.

Q. Weren't you drawing that expense through that check-book Robnett gave you?

A. This was separate from that, you understand; this was separate altogether. When I went out I told him I had my own money and paid my own expenses. This was a different piece of land from that other, altogether.

Q. I understand that, but I understood that in this check-book, for Robnett's expense you marked it "Ex." and for your own expense—

A. That was for Mrs. Harris' expense and my own, on the homestead.

Q. What did you draw the other checks for?

A. After while when I sold the land—

Q. No, I mean before you sold the land, what were you drawing the checks for?

A. For expenses; as I say, I drew checks for my



(Testimony of Joel H. Benton.)

expenses and Mrs. Harris' expenses for going up and back; she was up and down there two or three times that summer.

Q. How far was this timber claim from your homestead? [573—243]

A. Well, I couldn't say; it was about ten miles, I guess, maybe twelve miles,—I aint sure. I am just guessing at that. It was in 33, wasn't it?

Q. I don't know one from another. Do you remember who prepared your filing papers, your sworn statement for you?

A. No, I don't, because, as I say, I had to hobble around on crutches, and I think my son was there to get it done, and I don't know who did bring them out.

Q. Was your son employed by Mr. Robnett at that time too? A. No, sir.

Q. Do you know who he was employed by at that time?

A. He wasn't employed by anybody; he was out there just the same as me until he came in.

Q. I understood you were out there to assist Mr. Robnett.

A. He came out to stay there with me awhile.

Q. Now, do you remember when the time came around to make your final proof? A. Yes, sir.

Q. And do you remember how much you paid in the land office on the occasion that you made your proof?

A. I think it was something over \$400.00; I ain't sure now.

(Testimony of Joel H. Benton.)

Q. Where did you get the money to make that payment? A. I got it from Mr. Robnett.

Q. That was Clarence Robnett?

A. Clarence Robnett, yes, sir.

Q. Now, did you have any conversation with him or arrangement with him after the first time you saw him that you have referred to about getting that final proof money? A. No.

Q. Did you just go to him the day of the final proof and tell him you wanted the money, or what did you say? A. Yes, sir. [574—244]

Q. Did you give him a note?

A. No, I didn't give any note,

Q. Did you pay him any interest on the money you got from him?

A. No, I couldn't say that I did.

Q. And do you remember of ever repaying that money that you got from Robnett?

A. Well, finally, after about three months, after I finally sold it to him and he got his money for it.

Q. How much did he give you for it?

A. \$1600.00.

Q. Now, did you have any arrangement as to about how much you were to get out of this claim?

A. After the final proof we had an understanding.

Q. Not before?

A. No, sir, there wasn't a word said about it. I could have sold it to anybody just as well as to him as far as that was concerned; there wasn't a word said about it before final proof.

Q. Now, what was this arrangement that you

(Testimony of Joel H. Benton.)

refer to as making with him after final proof, about the sale of this land?

A. Well, after final proof, of course, I wanted more money than he wanted to give me.

Q. How much did he want to give you?

A. \$1,600.00. And I wanted \$2,000.00 for the place.

Q. Why didn't you sell it to somebody else then?

A. Well, as well to him as anybody else; that seemed to be about the price of land.

Q. State now about what arrangement you finally made with him for the sale of this land.

A. Well, he was to give me \$650.00 for it.

Q. Did he give you that much?

A. No, he didn't give me that much.

Q. How much did he give you for it?

A. \$520.00. [575—245]

Q. Had you ever borrowed any money from Mr. Robnett before you got into this arrangement with him about the homestead? A. No, sir.

Q. You never borrowed any money from him?

A. I should say not; I didn't have to borrow no money from him.

Q. Mr. Benton, what was your understanding with Mr. Robnett when you first talked with him about taking up a timber and stone claim that you were to do for him in consideration that he would furnish you the money?

Mr. TANNAHILL.—We object to that as irrelevant and immaterial, and not a statement of any fact.



(Testimony of Joel H. Benton.)

A. We had no understanding.

Mr. GORDON.—Q. Did you ever state on the witness-stand that you had an understanding to that effect? A. No, sir, not on a stone and timber.

Q. I am referring now to a stone and timber.

A. The arrangement we had was on the home-stand, I tell you.

Q. I am speaking now about the stone and timber claim. Please answer my question.

A. I say no. Just as I told you, we was talking about a stone and timber and he said if he could find one he would see me through; that was as much of an understanding as we had. I know what you are referring to there. I may have said there like this, that I had it in my own mind.

Q. That is what I am trying to find out, what was in your own mind, what was the way you understood that transaction.

A. That is the way I thought, but that wouldn't make it a fact.

Q. No, but if I can find out from you what your understanding was, and if I can find out from the other party what his understanding was, then we will know what both understood. Do you remember when you testified at the trial of United States vs. Clarence W. Robnett?

A. Yes, sir. [576—246]

Q. At Moscow, which was referred to in the stipulation heretofore mentioned as No. 1607, that in answer to a question by the district attorney, on page 329, you said: "This arrangement, as I under-

(Testimony of Joel H. Benton.)

stood it, was that I was to take up the land and he was to furnish all the money to pay all expenses, and after the expenses were taken out it was to be divided up?" A. That was on the homestead.

Q. No, I am speaking now about the timber and stone claim.

A. Well, you understand, Mr. Gordon, that Mr. Ruick had us pretty near scared stiff up there for a little while, and we got mixed up. Ruick had us all scared stiff up there; there's no use denying he did, because it was a fact.

Q. Were you under indictment? A. Yes, sir.

Q. Are you under indictment now?

A. I understand not.

Q. You are not mixed up now, are you?

A. No, I am not mixed up now, but I confess I was mixed up then. That was the arrangement about the homestead.

Q. Let us see now whether you were mixed up or not. At that trial Mr. Ruick handed you a sworn statement, and then this question follows: "Is that the sworn statement which you signed in the United States land office? Answer. Yes, sir, I think it is. That is my name there. Question. You haven't any doubt of it? Answer. No, I have no doubt of it. Question. And in duplicate? Answer. Yes, sir, that is my signature." Do you remember those questions being asked you and those answers being made by you? A. Yes.

Q. "And said papers were marked Plaintiff's Exhibit 14, for identification." I show you the same



(Testimony of Joel H. Benton.)

paper, marked Plaintiff's Exhibit 14, and ask you if that isn't the same paper you were looking at when Mr. Ruick was asking these questions of you at the trial of Mr. Robnett. [577—247]

A. That is my signature there.

Q. And that is the same paper he was talking to you about then, isn't it?

A. I couldn't swear it would be the same paper, but that is my signature.

Q. How many of these papers did you sign,—only the two, wasn't it?      A. Yes, sir.

Q. It was in duplicate?      A. Yes, sir.

Q. You never had any other sworn statement in that case, did you?

A. No. I say that is my signature there; I know that.

Q. Now, let us see whether you were mixed up then or whether you are mixed up now. Then this statement was made: "Read over this paper, Mr. Benton, and state whether you recall the provisions contained therein in relation to whether you had any agreement in relation to the land. Answer. I don't understand your question. Question. Read it over and state whether or not you recognize those provisions or statements as the statement at the time you made it? Answer. Yes, sir; as I understand it. I see that in there. I didn't quite catch your question. Question. You were sworn to this. You testified to that? Answer. Yes, sir. Question. At the time you made this statement under oath you filed your sworn statement, had you entered into any



(Testimony of Joel H. Benton.)

agreement with any person respecting the disposition of this land, when you should get title to it?" Then there was an objection by counsel, and the next question was: "Did you have any agreement respecting this? Answer. Well, I had— Question. Kindly answer the question. Answer. Yes, sir. Question. With whom did that agreement exist? Answer. Clarence Robnett." Do you remember those questions being asked you and those answers being made by you?

A. Why, I remember,—I can't remember all those things now, eight years ago, seven years ago, but it must be so. [578—248]

Q. But this hasn't been seven years ago; this was less than three years ago that this took place.

A. That was at the trial of Kettenbach, was it?

Q. No—at the trial of Mr. Robnett.

A. I certainly was mixed then if I said it was about the stone and timber, if I said there was an agreement.

Q. Mr. Benton, don't you know that Mr. Ruick wouldn't give you any papers to look at concerning any homestead entry, that the Court ruled that evidence out and wouldn't let him go into that?

Mr. TANNAHILL.—We object to that as irrelevant, incompetent and immaterial, and cross-examination. A. I don't know.

Mr. GORDON.—Q. Don't you know that when those questions were being asked you you were holding this in your hand?

Mr. TANNAHILL.—I object to that, on the

(Testimony of Joel H. Benton.)

ground that the witness didn't hold it in his hand. I was there and knew something about that.

Mr. GORDON.—Well, I was just going on the record that you went to the Circuit Court of Appeals on.

A. I don't know about that at all. I know very well that Mr. Ruick had me all mixed up anyhow, and if I swore there that I had that kind of an agreement on the stone and timber claim, as I said a while ago, as I supposed the thing, it was so, but I was thinking all the time about the homestead.

Q. Let us go a little further and see if this will refresh your recollection: "Question. Was that agreement made before you filed this application? Answer. Yes, sir. Question. Or this sworn statement? Answer. Yes, sir. Question. State what the agreement was. Give the language of Mr. Robnett and your own as to the title and disposition of these lands, the entire arrangement concerning it."

A. That was on the first trial of Robnett, wasn't it? [579—249]

Q. Yes, it was the trial of Robnett. Do you remember those questions being asked and those answers made by you?

A. Let me see that paper again. This is the paper you are talking about?

Q. Yes, sir.

A. That is on the filing of the stone and timber, isn't it?

Q. Sworn statement, yes, sir.

A. As I say, I was mixed up. Mr. Ruick had me mixed up. That agreement was on the homestead



(Testimony of Joel H. Benton.)

and nothing else.

Q. Did you ever file on your homestead?

A. No, sir, I never filed on it.

Q. You never filed any paper on it?

A. Never filed any paper whatever.

Q. How could you have gotten mixed up then, Mr. Benton, in thinking he was showing you a paper and talking about a homestead entry?

A. I said I got mixed on the homestead and timber claim.

Q. Then, this question on page 329 of the record that I have referred to, in No. 1607, "Question. Now I am asking you what that agreement was and if they desire the details, *they desire the details*, they may ask it. Answer. I can give it in detail, and just exactly what it was. Question. Well, that is all I want. Answer. Oh, it was some time before this. Question. I recognize that fact, knowing that that was true, I wanted to confine you under the rules of this court as closely as possible to an answer to my question direct in relation to the stone and timber entry, because the Court has ruled that matters relative to other land claims are not to be admitted. I am asking you what this arrangement was. Answer. The arrangement, as I understood it, was that I was to take up the land, and he was to furnish all the money to pay all expenses, and after the expenses were taken out, it was to be divided up." Do you remember making those answers to the questions asked you?

A. I suppose I did; I don't remember now, but I



(Testimony of Joel H. Benton.)

suppose I did. [580—250]

Q. The next question, on page 330: "Question. Who, if anyone, suggested that arrangement? Answer. Mr. Robnett, and I had the arrangement with him. Question. Well, now, then, do I understand this arrangement was the result of a conversation had between you and Mr. Robnett? Answer. Yes, sir." Do you remember those questions being asked and those answers being made by you?

A. If I made those answers on the stone and timber, I got it mixed up with the homestead business, because that was the arrangement we had on the homestead, and, as I say, there was nothing said about the stone and timber except just what I tell you, that he would see me through; that was the only thing that was said about the stone and timber.

Q. I understood you to say that you got the \$400.00 and some odd dollars from Mr. Robnett with which to make your final proof? A. Yes, sir.

Q. And where did you receive that money from him?

A. He paid it to me in the director's room of the Lewiston National Bank.

Q. Was it in cash? A. Yes, sir.

Q. And did you go directly from that room up to the land office to make your proof? A. Yes, sir.

Q. Was anything said to you on that occasion by Mr. Robnett as to what you should testify to with reference to questions that would be asked you when you went to pay that money into the land office?

A. I think there was something said about it.

(Testimony of Joel H. Benton.)

Q. Did Mr. Robnett have a set of the final proof papers down in the directors' room of the bank and go over them with you and discuss with you how you should answer the questions?

A. No, he didn't have all; he had a few questions,—he didn't have all.

Q. He had a blank form, did he? [581—251]

A. I don't remember; but he had only a few questions.

Q. Do you remember what those questions related to? A. One related to the money.

Q. And that matter was discussed, as to what you should say as to where you got the money?

A. I think so, yes.

Q. You weren't mixed up then, were you? You knew what you were doing then, didn't you?

A. Yes.

Q. What was said about the money at that time?

A. What was said about money?

Q. Yes, between you and Mr. Robnett, about what you should say about the money, when you went to the land office?

A. All he said was I should say it was mine.

Q. And that is what you did say when you went to the land office, isn't it? A. Yes, sir.

Q. Do you remember this question being asked you on your cross-examination at the land office, question seventeen, "Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?" And that you answered, "Earned it in selling goods. One day." Do



(Testimony of Joel H. Benton.)

you remember making that answer?

A. No, not in selling goods one day.

Q. The one day referred to the time you had had it in your possession.

A. Yes, I said something like that.

Q. That wasn't true, was it?      A. No, sir.

Q. And you and Mr. Robnett fixed that up before you went up to make that statement, didn't you?

A. In the bank there, yes.

Q. And then this question was asked you: "Have you kept a bank account during the last six months, if so, where? Answer. Yes, Lewiston National Bank." You never had a bank account there, did you? [582—252]

A. No, I guess not. In a way I had a bank account there; I drew checks on the bank.

Q. Do you remember, after you and Robnett were indicted, that Robnett came to see you to talk these matters over?      A. Yes, sir.

Q. And he wanted you to swear a certain way, did he not?      A. Yes.

Q. And what did he tell you?

A. What did he tell me?

Q. Yes,—on that occasion?

A. I don't just know what you mean.

Q. Well, what was the conversation you had with him; what was the subject of it?

A. Why, he said if we would both tell the same thing we would both get out.

Q. And you declined to tell the same thing as he did then. Is that correct?      A. Yes, sir.



(Testimony of Joel H. Benton.)

Q. Do you remember whether or not, in that conversation, he wanted you to say that the money he had advanced to you in these matters was a loan, and that you declined to do it? A. Yes.

Q. You never considered it a loan, did you?

A. Well, not a loan; I never gave a note for it.

Q. Before you went to the land office to make this final proof, at the conversation that you and Mr. Robnett had in the directors' room at the bank, do you remember discussing the question as to what you should say when you were asked at the land office whether you had an agreement or not with him concerning that timber claim?

Mr. TANNAHILL.—We object to that as irrelevant, incompetent and immaterial.

A. I didn't quite understand your question.  
[583—253]

Mr. GORDON.—Q. Do you remember, when you were in the directors' room with Robnett, just before you made final proof, that you were going over some questions with Robnett as to how you should answer them?

A. The only thing was about the money; that is all I remember about now, about the money.

Q. Do you remember whether or not, in that conversation, there was a discussion as to what you should say when you were asked if you had an agreement with anyone about that land?

A. I don't think that was discussed at all; I don't remember it at all.

Q. Mr. Benton, have you talked this case over with

(Testimony of Joel H. Benton.)

anyone since these last trials?

A. Why, I have talked to several people about it.

Q. You have talked to some of the special agents of the Government, have you not?      A. Yes.

Q. And did you read this testimony over, at their instance?

A. I read it over before I went down to Boise.

Q. Where did you read it?

A. In some rooms in the Weisgerber building.

Q. In whose office?

A. It seems to me that it was in Johnson's office, wasn't it?

Q. They are in the same building,—I don't know. Who showed it to you?

A. Mr. Watt and Mr. Smith.

Q. And you had no misunderstanding about it when you read that testimony then, had you?

A. No, but I remember they showed me my evidence on the last trial of Kettenbach and others; they didn't show me my evidence on the Robnett case, just the evidence on the last trial of Kettenbach and Dwyer.

Q. Do you remember at the trial of Robnett that we have referred to, page 342, that this question was asked you: "And the agreement you have [584—254] spoken about was going up with Mrs. Harris and some of the other members of your church to file on the homestead? Answer. My agreement was carried on through to the stone and timber, the same agreement." Do you remember making that reply to the question I read?



(Testimony of Joel H. Benton.)

A. No, I don't remember, but, as I said before, in my last testimony there, that was my supposition in my own mind, that that same thing went through, but the fact was there wasn't a word said about selling the land to him, the stone and timber

Q. Then, when you had your first talk with Robnett about taking up a timber and stone claim, do I understand you to say that it was your understanding then that your timber and stone claim was to be taken up under the same arrangement you had as to the homestead?

A. I would like to answer that by—

The SPECIAL EXAMINER.—You can answer it yes or no.

Mr. GORDON.—Answer it yes or no, and then explain what you have to say about it.

A. I can say yes, in a way. Here is the way of it: I remember the question asked me, "What do you mean by saying he would see you through."

Q. Explain now what your understanding was.

A. Why, that he would furnish me the money to go ahead for final proof and expenses. I think that question was asked me; I know that question was asked me.

Q. What were you to do with the land after you got your proof made?

A. Well, there wasn't a word said about it.

Q. What was your understanding that you were to do with it?

A. Well, my understanding was that he was to furnish me the money to prove up on, and there



(Testimony of Joel H. Benton.)

wasn't no understanding between him and I about that stone and timber, only as I might have thought I would let him have it, as long as he had furnished me the money, I thought I would let him have it, but I never agreed to sell that land at all. [585—255]

Q. You have said that enough to impress me with that fact, Mr. Benton, but I want to know what your understanding was that you were to do in order to get him to carry his part through that you have told about.

A. I say I understood he was to furnish me the money to carry it through, and the expenses and the final proof.

Q. Now, you have told twenty times what he was to do. What were you to do?

A. Why, I suppose,—my understanding was that I was to let him have the land.

Q. The same as it was with the homestead?

A. But there was nothing said about it.

Q. As I say, I am sufficiently impressed that that is the idea you are wishing to convey, but all I wanted was your understanding at the present time. Do you remember this question being asked you at the trial of Mr. Robnett that I have referred to several times, right in connection with the other questions I have read to you: "What I desire to get at is whether or not he said anything at that time with reference to stone and timber entries? Answer. When we was up in the timber he did, but the agree-went as to how we should divide was not mentioned there, but it was my understanding and the subse-

(Testimony of Joel H. Benton.)

quent facts would prove that he had the same understanding and I can give you it if you want me to." Do you remember the question being asked you then and your making that answer I have read?

A. Yes, sir.

Q. You remember them, do you? A. Yes, sir.

Q. And that answer you made, it is true, is it not?

A. Yes, sir.

Q. You weren't excited about that question and answer, were you? You knew what you were saying?

A. I knew what I was saying. [586—256]

Q. And you were telling the truth about it, weren't you? A. I believe I was.

Q. Do you remember whether or not, when you were discussing the questions you should answer in the land office at final proof relative to whether or not you had an agreement, that you and Mr. Robnett discussed whether you had an agreement because it wasn't in writing?

A. I don't remember anything about that at all.

Q. You don't remember that?

A. No, sir; that question was raised before I went into the timber though. I remember his saying this, that as long as we didn't have it in writing it was all right.

Q. That was when he first talked with you about—

A. About the homestead. I don't remember any such thing about the timber.

Q. That as long as you didn't have an agreement in writing it would be lawful?

A. That was before we ever went into the timber



(Testimony of Joel H. Benton.)

at all; that was on the homestead.

Q. Mr. Benton, did I ask you to whom you made a deed?     A. You didn't ask me, no, sir.

Q. Do you remember to whom you made a deed?

A. To Clarence Robnett.

Q. To Clarence W. Robnett?     A. Yes, sir.

Q. That was how long after you made your proof?

A. I think about three months; I ain't sure.

Q. This man Al. Smith that located you, did he charge you a location fee?     A. Yes, sir.

Q. How much?     A. I think it was \$50.00.

Q. Did you pay him, or did Mr. Robnett pay him?

A. Mr. Robnett paid him.     [587—257]

Q. Then, why did you say you paid him?

A. I didn't say I paid him.

Q. Oh, I understood you did.     Excuse me.

A. No, sir.

Mr. GORDON.—We offer in evidence timber and stone land sworn statement of Joel H. Benton, dated August 28, 1902; the testimony of Joel H. Benton on final proof; the cross-examination of Benton on final proof; the testimony and cross-examination of the witnesses at final proof; the receiver's receipt and the register's certificate, dated November 21, 1902; certified copy of patent issued to Joel H. Benton February 25, 1904, all relating to the entry of the south half of the southwest quarter, and the south half of the southeast quarter of section 15, township 39 north of range 3 east, Boise meridian; also certified copy of deed, dated December 29, 1902, between Joel H. Benton and Lida Alice Benton, his wife, to



(Testimony of Joel H. Benton.)

Clarence W. Robnett, consideration \$1600.00, to the south half of the southwest quarter and the south half of the southeast quarter of section 15, township 39 north of range 3 east, Boise meridian, executed before Otto Kettenbach on the same date as the deed, and recorded at the request of the Shoshone Abstract Company April 27, 1903, at the office of the recorder of Shoshone County.

Said last above mentioned documents were thereupon marked by the stenographer as Exhibits 12A, 12B, 12C, 12D, 12E, 12F, 12G, 12H, 12 I, 12J, 12K, 12L.

Mr. TANNAHILL.—The defendants waive any further identification of the papers, but severally object to the introduction of the papers in evidence in support of bills No. 388 and 407, upon the ground that the entry is not involved in those two cases, and they are irrelevant and immaterial. The defendants severally object to that portion of the papers offered in evidence relating to the final proof, and especially the testimony of claimant Joel H. Benton and the cross-examination of the claimant Joel H. Benton, the testimony of the witness William B. Benton and the cross-examination of the witness William B. Benton, the testimony of the witness Walter A. Smith and the cross-examination [588—258] of the witness Walter A. Smith, and the proof of publication, upon the ground that they relate to the final proof, occurring long after the filing of the sworn statement, and are irrelevant and immaterial.

Mr. GORDON.—I will say, Mr. Tannahill, that I

(Testimony of Joel H. Benton.)

notice that the notice for publication and the non-mineral affidavit are not with those papers, but they have been exhibits in several trials and may have been mislaid; I haven't kept them out of the record at all.

Mr. TANNAHILL.—Well, that is all right.

Mr. GORDON.—Q. Mr. Benton, in what township was your homestead claim, the one that you homesteaded on?     A. In 39-4.

Q. And this is 39?     A. —3, I believe.

Q. This isn't the same claim you squatted on as a homestead and afterwards filed a timber and stone on, is it?     A. No, sir.

Mr. GORDON.—That is all. [589—259]

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Benton, did you ever have any contract, agreement or understanding in regard to the sale of this piece of land, or the conveyance of it, prior to the time you filed your sworn statement, and prior to the time you made your final proof, with William F. Kettenbach, George H. Kester, or William Dwyer?     A. No, sir.

Q. Did you have any such agreement with the Clearwater Timber Company, or Elizabeth White, or any of the defendants named in these three actions?

A. I never had a word with them. I never talked with them about it.

Q. And as I understand you, you had no agreement for the sale of your timber claim prior to the time you filed your sworn statement, and prior to the



(Testimony of Joel H. Benton.)

time you made your final proof, with anyone?

A. No. In fact, there was nothing said about it at all.

Q. And there was no such agreement carried out between you and Mr. Robnett?

A. I know I sold him the land afterwards.

Q. You know you sold him the land afterwards? Now, how long after you made your final proof was it that you sold him your land?

A. I made a deed to him, it says there about three months. I don't remember now.

Q. And how much did you get for your land?

A. I got about \$520.00. The consideration of the deed was \$1,600.00.

Q. \$1,600.00? A. Yes, sir.

Q. And from that \$1,600.00 was deducted the money that Mr. Robnett had let you have?

A. Yes, sir. [590—260]

Q. You paid him back the money he had advanced you, out of that \$1,600.00, and that left you about \$530.00? A. \$520.00.

Q. \$520.00? A. Yes, sir.

Q. Then, Mr. Benton, your affidavit that you made when you filed your sworn statement, that "I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may



(Testimony of Joel H. Benton.)

acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that statement was true, was it?

A. Well, it was true when I made it. I wanted to raise some money and gain all out of it I could.

Q. I know; but you had made no contract to convey the land at that time?

A. No, I have made no contract to convey the land.

Q. And whatever might have crept into your evidence that you gave over in Moscow in the case of the United States against Clarence Robnett, and the case of the United States against William F. Kettenbach and George H. Kester and William Dwyer, regardless of what you may have said over at Moscow, the statement that you make here now is true, is it not?

A. I didn't get all that.

Q. I say, whatever might have crept into your evidence over at Moscow, the statement that you make now that you had no agreement to convey your land is true?

A. As a matter of fact I didn't make any agreement.

Q. That is true?      A. Yes, sir. [591—261]

Q. I will ask you, Mr. Benton, if during your talks with Mr. Robnett if he said anything to you about not letting Mr. Kester or Mr. Kettenbach know of his purchasing the land, or of his arrangements with you?

A. He did, yes, sir; he told me several times he had no connection with them whatever; that he had

(Testimony of Joel H. Benton.)

nothing to do with them at all; it was on his own account.

Q. He was doing business on his own account?

A. On his own account, yes, sir. He told me that several times.

Q. And what was his actions in regard to them not knowing what he was doing in regard to your land? State whether or not he tried to keep that from them, or talked with you where they couldn't hear you.

A. He did; he tried to keep it secret.

Q. He tried to keep it from them?

A. Yes, sir. He took me out in the Directors' room, and didn't want anybody to hear what we was doing.

Q. Now, when you sold your land to Robnett was the \$150.00 that was paid to Al. Smith as a location fee—

A. No—\$50.00.

Q. Or \$50.00? A. Yes, sir.

Q. Was that \$50.00 that was paid to Mr. Smith as a location fee deducted from the purchase price of this land? A. Yes; all expenses were, yes.

Q. And you and Mr. Robnett never agreed on what you should have for the land until about three months after you had made your final proof?

A. No—about three months. You see what the deed is there—about three months—I don't remember just the date of the deed. [592—262]

(Testimony of Joel H. Benton.)

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Benton, how many times did you go to the Lewiston National Bank relative to this claim?

A. Relative to this claim?

Q. Yes.

A. I didn't go to the Lewiston National Bank about the claim.

Q. No—I mean how many times were you in there to talk to Robnett about this claim?

A. I was there once before I filed, to receive the money.

Q. When you were there did you go in the Directors' room then?      A. Yes, sir.

Q. And then when were you there again? You were there again in the Directors' room when you made your final proof?

A. Yes, sir; when I made my final proof.

Q. And did you go to the bank when you made the deed?      A. No, sir; he came to my house.

Q. He came to your house?      A. Yes, sir.

Q. Now, what was Mr. Robnett's position in the bank during all this time?      A. Bookkeeper.

Q. Now, what was it brought about this conversation in which you relate that Mr. Robnett told you not to let either Kester or Kettenbach know anything about it?

A. Oh, I don't know; he just seemed like he didn't want them to know it. Sometimes he would go and shut the door between the Directors' room and the main part of the bank. He didn't say he didn't want



(Testimony of Joel H. Benton.)

them to know.

Q. The Directors' room was a little glass place partitioned off from the rest of the bank, wasn't it?  
[593—263]

A. No. At that time it was the room behind. It was a little different from what it is now. It was behind the main part of the room.

Q. Now, what did he say?

A. Oh, I don't know. I say, I don't think he said not to tell them anything about it, but I say from his actions.

Q. You are just judging from the way he acted, and not by anything he said?

A. He told me—that was before, though,—that his actions had nothing to do with the bank.

Q. Is that the way he expressed it? A. Yes, sir.

Q. He didn't mention Mr. Kester or Mr. Kettenbach? A. No, sir.

Q. Then, he never told you that Mr. Kester and Mr. Kettenbach never had anything to do with this?

A. I say he told me he had nothing to do with them; that he was doing it on his own account. He told me he had borrowed the money and mortgaged his home to get the money to do this.

Q. What brought about that conversation?

A. We were talking about expenses.

Q. He told you at that time that he had no connection with Kester and Kettenbach relative to this?

A. Yes, sir.

Q. And that was before you filed on the timber and stone claim? A. Yes, sir.

(Testimony of Joel H. Benton.)

Q. Did he ever make that statement to you after that?

A. No; I never had no conversation with him about it.

Q. About their connection with it? A. No.

Q. That was then prior to August, 1902?

A. Prior to the time of filing. [594—264]

Q. Yes? A. Yes.

Q. Which was August, 1902?

A. Yes. I don't know—I think I filed then, wasn't it?

Mr. GORDON.—Yes. That's all, Mr. Benton.

**[Testimony of Frederick W. Newman, for  
Complainant.]**

FREDERICK W. NEWMAN, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

**Direct Examination.**

(By Mr. GORDON.)

Q. Your name is Frederick W. Newman?

A. Yes, sir.

Q. A little louder? A. Yes, sir.

Q. Where do you reside? A. Lewiston.

Q. Lewiston? A. Lewiston; yes, sir.

Q. And you resided there in March, 1903?

(No answer.)

Q. You resided in Lewiston in March, 1903?

A. No, sir.

Q. Where did you reside then?

A. Clarkston, Washington.

Q. And what was your occupation?

(Testimony of Frederick W. Newman.)

A. No—I lived on this side of the river. That's right—on this side of the river. I did live in Lewiston. [595—265]

Q. Then, you did live in Lewiston? A. Yes, sir.

Q. What was your occupation in March, 1903?

A. I was running a warehouse—warehouseman.

Q. You were running what? A. A warehouse.

Q. What kind of a warehouse?

A. A grain warehouse—receiving grain—weighing grain.

Q. Were you the owner of this establishment?

A. No, sir.

Q. Who were you employed by?

A. F. W. Kettenbach.

Q. Frank W. Kettenbach? A. Yes, sir.

Q. And what were your duties there?

A. Why, receiving grain, weighing it in, and working in the warehouse, piling it up.

Q. Were you a laborer at the warehouse?

A. Well, I was receiving it, attending to the office work and also laborer at the same time, and shipping out, and such like as that.

Q. What was your salary?

A. Why, it was either—at that time I think it was \$75.00.

Q. A month? A. Yes, sir, or \$70.00.

Q. Were you a married man? A. Yes, sir.

Q. Did you have any children? A. Yes, sir.

Q. How old were they? A. Why, let's see—

Q. Well, how many children did you have?

A. Three. [596—266]



(Testimony of Frederick W. Newman.)

Q. And how old is the oldest one now? A. 13.

Q. And how old is the next oldest?

A. She is going on 11.

Q. And how old is the youngest now? A. 3.

Q. Then, in 1903 you only had two children?

A. I had three children.

Q. Is one of them dead?

A. No. The oldest boy is 13 years old.

Q. And how old is the youngest now?

A. At that time?

Q. How old is the youngest child you have living now? A. Three years old.

Q. Well, he was not born in 1903, then?

A. No, sir.

Q. Well, have any of the children died since 1903?

A. No, sir.

Q. Then, you only had two children in 1903?

A. I had three children. Let me see—no; I only had two at that time; yes, sir.

Q. Yes?

A. Yes, sir. There was one born a few months after.

Q. Did you rent a house in Lewiston, or did you own your home?

A. I paid rent for the ground that I lived on, but I owned the house.

Q. It was just a town lot?

A. Why, it wasn't far from the warehouse. It wasn't exactly a lot. While I didn't make any use of the ground except where the house stood, I had the privilege—there was about two acres in the piece—

(Testimony of Frederick W. Newman.)

I had the privilege of using the ground, but I didn't have much time.

Q. Did you have to pay rent for the ground, Mr. Newman? [597—267] A. No, sir.

Q. Who spoke to you about taking up a timber claim?

A. I spoke to Mr. Emery; I asked him in this way: I says, "Mr. Emery, the wood is getting so high, I understand you are locating timber claims up there; is there any chance at all?" "Well," he says, "there isn't much chance; any claim that is of any account," he says, "is gone"; he says, "it has been taken up long ago." He says, "There might be something there yet. I will see you after a while," or some time or another, "and let you know if there is any land to be had."

Q. Well, did you intend that seriously?

A. Yes, sir; I did at the time.

Q. It wasn't a joke, then?

A. No, sir; it wasn't in a joking manner with me.

Q. Which Mr. Emery was this you referred to?

A. Fred. Emery.

Q. And what was his business?

A. I don't know what he was doing at the time—just exactly at the time; he had been running the sawmill here, and I don't know exactly what he was doing just at that time. He was here in Lewiston.

Q. Was he of the firm of Emery & Colby?

A. I think not. I think they had dissolved by that time. No, they were still milling; the mill was still running.

(Testimony of Frederick W. Newman.)

Q. Did you ever talk with Mr. Frank Kettenbach about this timber claim?     A. No, sir.

Q. Did you know Mr. George H. Kester at that time?     A. Yes, sir.

Q. And did you know Mr. William F. Kettenbach?

A. Yes, sir; I knew them by sight; I don't know as I was on speaking acquaintance with them at that time.

Q. Well, later did Mr. Emery tell you something further about the timber claim?     [598—268]

A. Yes, sir.

Q. Now, state what happened.

A. Well, he said I could go up there, and he says, "There is something to be had there yet," and I told him all right, that I would investigate it.

Q. Now, how long after the first conversation did you have the second conversation?

A. Well, I couldn't exactly say. Oh, it must have been a matter of a week or two.

Q. A week or two?     A. Yes, sir.

Q. Well, when you first talked to him he didn't know whether there was a timber claim he could locate you on or not, is that correct?

A. That is what he intimated, yes, the way I understood it.

Q. Well, now, state what transpired next in relation to this claim.

A. Well, I looked the matter up then, and I told him that there wasn't much to that.

Q. There wasn't much to what?

A. To the claim, and I says I would like to have



(Testimony of Frederick W. Newman.)

a different claim than that.

Q. Well, had you been to see the claim then?

A. Yes, I saw that land—that whole section of country—previous to that.

Q. And when did you see the whole section of the country?     A. Well, up as early as '96.

Q. 1896? Were you a timber cruiser yourself?

A. No, sir; I was working in a logging camp; oh, I should judge it was about a mile—oh, it was more than that; we had a camp within I should judge about three miles and a half from there.

Q. You knew where this timber claim was just as soon as he had selected a place to put you on? [599—269]

A. No. No, I didn't. I had been in through that country, but I didn't know the particular claim. I didn't know anything about that.

Q. And then, when he said that he had a claim what did you say to him?

A. Why, I says for him to wait a few days. I says, "I want to see E. C. Smith, to see if they are loaning any money on Clarkston real estate." I owned a house and lot in Clarkston, and I says to Mr. Smith, "Are you loaning any money on Clarkston real estate?" And he says he would, but he says, "Why not get it over there?" And I says, "I am working for the people over there, and I would rather get it here."

Q. Who was Mr. E. C. Smith?

A. He was cashier of the Idaho Trust Company.

Q. And was Mr. Frank Kettenbach President of

(Testimony of Frederick W. Newman.)  
the Idaho Trust Company at that time?

A. Yes, sir.

Q. And before you made any arrangements then with Mr. Smith, or rather with Mr. Emery, you went to see Mr. Smith to see if you could borrow some money? A. To borrow some money.

Q. All right. Go ahead.

A. Well, he told me he did; he would loan me money on Clarkston real estate, and I asked him about the rate of interest, and he wanted to know how long a time I wanted it. Well, I told him a year or two. "Well," he says, "how much do you want?" "Well," I says, "about \$300.00, and possibly \$400.00," I says, "I have some money, but I will let you know how much I want." And then I had no more in regards to getting the money matters—I had no more conversation with Fred. Emery till some time before proving up time.

Q. Well, wait a minute. When was it that you told him that the claim that he referred to was not satisfactory to you?

A. Well, that must have been some time in February. [600—270]

Q. That was before you filed? A. Yes.

Q. Now, you hadn't been up to see the claim then, had you?

A. Not in February I hadn't, only the country what he was talking about; he described it to me as near as he could at that time. "Well," I says, "it is too far away from the river," I says, "Isn't there something closer by?" "Well," he says, "we will

(Testimony of Frederick W. Newman.)

have to see about that.”

Q. Well, then did he get you something closer by the river?

A. Well, it is really closer by than what he showed me first.

Q. Well, did you go up there and go over this claim?

A. I went over in March, I went over the claim that we selected.

Q. With whom did you go over the claim?

A. Fred. Emery.

Q. Did you go all the way up to the claim?

A. Well, I supposed I did, as near as he described it. He showed me the line, and I supposed that was the claim.

Q. Now, tell us where you did go.

A. Well, do you want—?

Q. You started from Lewiston?

A. Yes—we have to start from Lewiston.

Q. Well, tell us where you went to.

A. We went up to Ahsahka.

Q. And how far is that from Lewiston?

A. It is about—that is about 40-odd miles, I don't exactly know—40-odd miles.

Q. And then where did you go after you went this 40 miles?

A. We took up the trail—we took up the river.

Q. Well, how far did you go then?

A. Let's see—about—

Q. Can't you approximate it?

A. Oh, I can somewheres near; it is about 18 miles,



(Testimony of Frederick W. Newman.)

I think, up to Dent's. [601—271]

Q. Dent's?      A. Dent's.

Q. And then where did you go?

A. To the island—the big island.

Q. And how far is that from Dent's?

A. It is about 12 miles.

Q. And how far from the big island was the claim which you located?

A. It is somewheres in the neighborhood of seven miles.

Q. Did anyone go along with you besides Mr. Emery?      A. Evans—Jim Evans.

Q. Now, when you were up there did you find out who owned the land adjoining the claim which you would be locating on?      A. No, I didn't.

Q. Nobody told you?

A. I couldn't find any information whatever.

Q. And nobody but Jim Evans went with you, did I understand you to say?      A. Yes, sir, that's all.

Q. How long were you gone from Lewiston?

A. I think we was up there about three days.

Q. Three days from the time you left here until you returned; or were you in the timber three days?

A. No—up from the time we left here, I think, all told.

Q. From the time you left here until you returned?

A. Yes, sir—about three days.

Q. Three days?      A. Yes, sir.

Q. And you went the first 40 miles by rail, did you?

A. 40-odd miles.

Q. And you went the rest by saddle horse, or how?

(Testimony of Frederick W. Newman.)

A. Well, we had a pack-horse, and we went afoot a whole lot. [602—272]

Q. How long after you returned did you file?

A. Well, I don't know; it must have been a couple of days before I filed on it.

Q. Do you remember what month it was that you went up there—went up to the timber?

A. I think it was the fore part of March.

Q. Was there any snow up in there at that time?

A. Yes.

Q. Sir?

A. Yes, sir; there was some snow up there.

Q. Very deep?

A. Well, in places it was, and towards the river it wasn't so very deep.

Q. How deep was it?

A. Oh, there was snow in places and in places there wasn't.

Q. Did you have to go on snowshoes?      A. No.

Q. How deep was the deepest you went in on the trail?

A. Oh, there was places where there was drifts you could go knee-deep, or better.

Q. Now, after you went up there with Mr. Emery, or while you were up there, was it then that you learned that the claim was better than you thought it was?

A. Yes; I thought it was closer to the river than what he first presented to me—what he told me.

Q. Do you know how much timber was on that claim?

(Testimony of Frederick W. Newman.)

A. No, I didn't really know, only just what him and Jim said about it—Jim Evans—Evans and Emery.

Q. And you came back to Lewiston and made your filing, did you?     A. Yes, sir.

Q. Who prepared the first papers that you filed in the land office?     [603—273]

A. I think it was Fred. Krutinger, or Cox. I think it was in Cox's office—Fred. Krutinger, I think it was.

Q. Did you pay any fee for that service?

A. Yes.

Q. How much?

A. Well, I don't know what it was—\$1.50 or \$2.50.

Q. Do you remember what your expenses were in going from Lewiston up into the timber and returning?     A. No, I don't.

Q. Haven't you any idea?

A. Because Jim Evans had grub at the island there, and it didn't cost me very much. I didn't have to pay for everything I got.

Q. I understand that; but I want to know what you did pay for, and how much it was?

(No answer.)

Q. Did you pay anything on this excursion?

A. Well, yes.

Q. Well, how much?

A. Well, that trip cost me somewheres about \$8.00.

Q. And did you pay a location fee?

A. I paid \$100.00 for that.

Q. When did you pay that—before you filed?



(Testimony of Frederick W. Newman.)

A. No.

Q. When—after you sold?

A. After I sold, yes. That was the understanding, if I ever did sell to pay it after it was sold.

Q. What was that?

A. That was the understanding—to pay him if I ever sold, to pay him after it was sold.

Q. And you were not to pay unless you did sell?

A. Oh, I was to pay anyway, but I was to give him a note, to make him good for it, he says. [604—274]

Q. Did you give him a note for it?

A. No, I didn't.

Q. Do you remember whether or not you paid a filing fee when you presented your first papers at the land office?

(No answer.)

Q. Can't you think?

A. I don't remember whether I did or whether I didn't, or how much it was. I don't remember now.

Q. Who went to the land office with you when you filed your sworn statement?

A. Why, Emery and Evans and Bishop.

Q. Mr. Lon E. Bishop?

A. Lon E. Bishop, and Smith, I think it was.

Q. What Smith? A. I think his name is Smith.

Q. Who went with you to the office when you had your filing papers prepared?

A. I think Fred. Emery did.

Q. Did you suggest the names of the witnesses for final proof at the time you made your initial application? A. Oh, I don't think I did.

(Testimony of Frederick W. Newman.)

Q. Did Mr. Emery go to the land office with you when you filed your sworn statement?

A. I think he did.

Q. And you say you have no recollection of naming the witnesses for final proof?

A. I don't know as I did.

Q. Now, did you ever learn that Mr. Smith wouldn't loan you the money to make the proof with?

A. I never learned that he wouldn't loan me the money.

Q. Sir?

A. He never said that he wouldn't loan me the money. [605—275]

Q. Then, you never tried to get it from him?

A. No, sir, I didn't.

Q. You remember the occasion of making your final proof, do you?      A. Yes, sir.

Q. And how much did you pay to the land office on that occasion?

A. I think it was something better than \$400.00.

Q. Do you know how much more than \$400.00?

A. I don't exactly remember now.

Q. Wasn't it just \$400.00?

A. I am not sure as to that. I know what money I had and what money I got from Emery.

Q. Got from who?

A. Got from Emery,—from Colby, rather.

Q. Now, which one did you get it from?

A. From Colby.

Q. And what is Mr. Colby's name?

A. I think it is C. W. Colby.

(Testimony of Frederick W. Newman.)

Q. And you say that he was the partner, or had they dissolved their partnership at that time, with Emery?

A. I don't know. He was bookkeeper there then. It was Small & Emery still operating the mill.

Q. What is that? A. Small & Emery.

Q. I can't hear you.

A. Small & Emery were operating the mill there yet, and Colby was an employee there, keeping books there; whether he was in partnership or not I don't know. He was just known to me as the man that kept the books there.

Q. Now, who went to the land office with you to make your final proof?

A. Why, it was Emery and Evans, Bishop and Smith.

Q. Now, where was Mr. Colby at that time?  
[606—276]

A. He came up there, and he only came in the hallway and gave me the money.

Q. When did you make your arrangement with Mr. Colby to get the money to make your proof?

A. It was a few days before; I met Mr. Emery, and I says, "Fred"—I told him the circumstances of the bank; the bank wanted to make me a two-year loan, and I says, "I don't know as I will ever want the money that long or not." "Well," he says, "we don't care to be loaning any money for a year for a small loan like that," he says, "we would like to loan you about \$500.00 for about two years," and I says, "I don't know as I want that much money, and I



(Testimony of Frederick W. Newman.)

don't know as I will want it for two years," and I says to Fred, "Is there any way to get the money to pay for the filing now, instead of going to the bank and borrowing the money for two years?" He says, "I don't know; I'll see."

Q. Now, where was this conversation?

A. That was right here in Lewiston.

Q. Whereabouts in Lewiston?

A. I think somewheres on the street. I was working at the time and I met him down town. I says, "I can get the money from the Idaho Trust Company by mortgaging my home," and I asked him then if there wasn't private money besides going to the bank, because they wanted to loan it for two years.

Q. Well, you have told us about that. And what did he say?

A. He says he would see me in a few days.

Q. How long was that before final proof?

A. I don't think that was much over two or three days.

Q. And then when did he tell you that he would let you have it, or could get it for you?

A. Well, that was—I don't know whether it was the same afternoon or the next day.

Q. And then he told you that he could get it for you? A. Yes. [607—277]

Q. Did he tell you where he could get it?

A. Let me see: I think he did; I think Colby had the money, he said.

Q. Where did he tell you you could get it?

A. Well, I think it was right on the street when he told me.

(Testimony of Frederick W. Newman.)

Q. No—but where did he tell you he could get the money?

A. He said Colby had the money. “Well,” I says, “I am pretty busy; can you arrange it so I can get the money?” He said that he could.

Q. You never had a talk with Colby about it?

A. No, sir.

Q. And did you make any arrangements to meet him to get the money?

A. Well, Fred did—I didn’t.

Q. I mean to meet Mr. Emery. Did you make any arrangements to meet him and get the money from him?

A. No, I didn’t, not from him. He said Colby would bring the money around.

Q. And did you tell him when you were going to the land office?

A. Yes; he knowed when I was going.

Q. Well, did he know the time of day you were going, or was he going to hang around all day?

A. No, sir; he said in the afternoon.

Q. You didn’t tell him the hour?

A. Not exactly, no, sir.

Q. And you went to the land office? A. Yes, sir.

Q. And did you go in the land office, or—

A. I stayed out in the hallway and Colby came up and Colby handed me the money. He says, “How much do you want?” “Well,” I says, “I don’t know; I have got ninety-odd dollars,” and he says, “I am in a hurry; here it is.” And I says, “How much is there there?” and I don’t [608—278]

(Testimony of Frederick W. Newman.)

know just exactly how he worded it, and he says, "You pay what it costs you at the land office, and if I have made a mistake, if there is anything left over you hand it to Fred Emery."

Q. Colby said this?      A. Yes, sir.

Q. He handed you a bunch of money?

A. Yes, sir.

Q. And he told you he didn't know how much was there?

A. Well, he says, "I don't know exactly how much it is; I know somewheres near."

Q. And how much money was there there?

A. Well, I don't know. There must have been \$350.00.

Q. Wasn't it \$400.00?

A. Well, that I don't remember.

Q. Well, Mr. Newman, as I understand, Mr. Colby didn't know how much was there, and he just handed it to you and he said, "If there is more than is needed, hand the balance to Emery"?

A. Fred Emery came right in there when he paid it.

Q. Did Mr. Colby draw the money out of the Lewiston National Bank and hand it to you while you was standing there?

A. I don't know. I was standing out in the hallway.

Q. Did you give him a note for it?

A. Not at that time. He was going away. I asked Mr. Emery this way, if I could get that money for a few days without making out any papers until



(Testimony of Frederick W. Newman.)

I decided what to do, and I says to my wife, "If we get the money from the bank we will have to mortgage our home; if we are going to keep the timber claim we will have to mortgage our home," and she said she wouldn't sign the mortgage.

Q. And you went up in the land office and made your final proof?     A. Yes, sir.

Q. And Mr. Emery?     A. Yes, sir. [609—279]

Q. And Mr. Bishop?     A. Yes, sir.

Q. And Mr. Evans—went along with you?

A. Yes, sir.

Q. You were all there at the same time?

A. Yes, sir.

Q. Was there anything said at the time about the questions that would be asked you at the land office when you made your proof?

Mr. TANNAHILL.— We object to that as irrelevant and immaterial.

Mr. GORDON.—Answer the question.

A. No, sir. I don't remember that there was anything said about it.

Q. Did the gentlemen that went to the land office with you leave the land office at the same time you did?

A. I couldn't positively say whether they did or not. It seems to me they went into the hall; whether they went down stairs or not I don't know. I had to go to work again. I didn't pay much attention to it.

Q. Now, at that time you didn't know whether you were going to sell your claim or not, as I understood

(Testimony of Frederick W. Newman.)

you?      A. No, sir.

Q. Nothing had been said?

A. No, sir. Oh, they said this much: I asked Fred Emery, I says "Fred, is there any show of selling this land?"

Q. When was that?

A. That was in the morning.

Q. Before you made your proof?      A. Yes, sir.

Q. And what did he tell you?

A. "Well," he says, "he didn't know; there is always sometimes," he says, "there is a chance of people buying." I asked who was buying. Well, he says he didn't know. [610—280]

Q. And you all came out of the land office together, did you?

A. Well, out of the office, yes, sir, I think so.

Q. Well, where did you go then?

A. I went down to the Idaho Trust bank, to fire the furnace.

Q. And what did you do there?

A. Attended to the furnace.

Q. Were you employed there then?

A. Yes, sir.

Q. As a janitor?      A. Yes, sir; at the time.

Q. At the Idaho Trust Company?

A. The grain business was dull, you know; there was nothing doing at the warehouse, and it was getting toward spring, and I attended to the fires, and also at another building.

Q. And you went over to the Idaho Trust Company then?      A. Yes, sir.

(Testimony of Frederick W. Newman.)

Q. You sold that claim the same day, didn't you, Mr. Newman?     A. Yes, sir.

Q. Who did you sell it to?

A. I think the papers was made out to W. F. Kettenbach—I think it was W. F.

Q. Was it W. F. Kettenbach and George H. Kester?

A. Well, I don't remember now whether it was or not. I thought it was—

Q. Well, there hadn't been any arrangement made before you left Mr. Emery and went to fire the furnace?     A. No, sir.

Q. What time did you make your proof at the land office? Was it after dinner?     A. Yes.

Q. How long after dinner?

A. Well, I don't know. [611—281]

Q. 3 or 4 or 5 o'clock?

A. No; it was shortly right after dinner.

Q. And with whom did you negotiate the sale of this land?

A. I just asked Fred. Emery if there was a chance to sell it—I didn't talk to anybody—I just asked him if a man wants to sell can he sell his land? He says, "What do you want to sell for?" "Well," I says, "the woman objects to putting a mortgage on the property to raise the money." She objected to my putting a mortgage on the home, and I just wanted the money for a few days.

Q. And how much money did he give you in cash that evening?     A. He didn't give me any in cash.

Q. What did he give you?     A. A check.



(Testimony of Frederick W. Newman.)

Q. For how much?     A. I think it was \$200.00.

Q. And you gave him \$100.00 of that for locating you?     A. I gave him \$100.00 the next day.

Q. You got the check cashed?     A. The next day.

Q. Where was the check drawn on—what bank?

A. Well, I don't know whether it was the Lewiston National Bank or on the Idaho Trust. I cashed it at the Idaho Trust. I was working there. I told Fred. I was busy and for him to come in and I would pay him the locating fee.

Q. And you made the deed and acknowledged it the same day?     A. Yes, sir.

Q. Before whom did you acknowledge the deed, do you remember?     A. I think it was Barnett.

Q. Did he have an office in the Idaho Trust Company?

A. No; I think it was either in the Beehive or the Adams building, I don't know which.

Q. Now, at the date you filed your sworn statement you hadn't [612—282] been naturalized at that time, had you?

A. Well, I thought I was.

Q. Well, you were not, though, were you?

A. I afterwards found out that I wasn't. I supposed until this fall that I didn't have to take out any papers.

Q. And it was necessary for you to take out your first papers the day you made your sworn statement?

A. Yes, sir.

Q. Who told you that?     A. I don't know.

Q. Who told you you were not a citizen of the

(Testimony of Frederick W. Newman.)

United States?

A. I think it was in Krutinger's office. I supposed all the time that my father took out his second papers, but I found out,—well, I always supposed so until here not over two months ago my brother told me that he hadn't; that he took out his first papers, but he hadn't taken out at the time, his second papers. They told me if I had my father's application,—first papers—I told them no; my father was in Wisconsin. "Well," he says, "hadn't you better take out your own papers then?"

Q. Mr. Newman, I show you timber and stone lands sworn statement, dated March 25, 1903, signed by Frederick W. Newman, and ask you whether or not you signed that paper in duplicate, and filed the same in the land office at Lewiston on the date it bears? A. How is that?

The reporter repeated the last question.

A. That is my signature, yes, sir.

Q. And you filed that in the land office?

A. Yes, sir; I think I did.

Q. I show you nonmineral affidavit of the same date, signed Frederick W. Newman, and ask you if you signed and filed that paper in the land office on the date it bears?

A. That is my signature, yes, sir.

Q. I show you the testimony of Frederick W. Newman, taken on final proof, June 17, 1903, and ask you if that is your signature to that paper?

[613—283] A. That is my signature there.



(Testimony of Frederick W. Newman.)

Q. To that paper which I have just called your attention to?      A. Yes, sir.

Q. And the cross-examination taken at the same time, is that your signature to that paper?

A. That is my name there.

Q. To the paper that I have just described?

A. Yes, sir.

Mr. GORDON.—We offer in evidence timber and stone lands sworn statement of Frederick W. Newman, the nonmineral affidavit of Frederick W. Newman, the notice for publication of Frederick W. Newman, the testimony of Frederick W. Newman, given on final proof, and the cross-examination thereof, all of which have been identified by the witness Newman, the testimony and cross-examination of the witnesses on final proof, and receiver's receipt and the register's certificate, dated June 17, 1903, the other papers of the land office files relative to said entry, a certified copy of the patent issued to Frederick W. Newman, August 3, 1904, all relating to the entry of the south half of the northeast quarter and the east half of the southeast quarter of section 23, in township 39 north of range 3 east, Boise meridian. I also offer a certified copy of a deed made by Frederick W. Newman and wife Lelia, dated June 17, 1903, conveying to William F. Kettenbach and George H. Kester, in consideration of \$1,000.00, the south half of the northeast quarter and the east half of the southeast quarter of section 23, township 39 north of range 3 east of Boise meridian, executed and acknowledged by Frederick W. Newman and Lelia



(Testimony of Frederick W. Newman.)

Newman before H. K. Barnett, Notary Public, on June 17, 1903, and recorded in the office of the recorder for Shoshone County at the request of George H. Kester, August 10, 1903.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to the introduction of the papers or either thereof, in support of bill No. 388 and 407, upon the [614—284] ground and for the reason that the entry is not involved in these two actions, and they are irrelevant and immaterial in so far as they relate to the two particular actions referred to. And the defendants severally object to all the final proof papers and especially the proof of publication, the testimony of claimant Frederick W. Newman, and the cross-examination of claimant Frederick W. Newman, the testimony of the witness Lon E. Bishop, and the cross-examination of the witness Lon E. Bishop, the testimony of the witness Fred W. Emery, and the cross-examination of the witness Fred W. Emery, and the affidavit of Frederick W. Newman; upon the ground that they are matters relating to the final proof, occurring subsequent to the filing of the declaratory statement, and they are irrelevant and immaterial.

Said documents were thereupon marked by the reporter as exhibits 13, 13A, 13B, 13C, 13D, 13E, 13F, 13G, 13H, 13I, 13J, 13K, 13L, 13M, 13N, 13O, and 13P.

(Testimony of Frederick W. Newman.)

Cross-examination.

(By Mr. TANNAHILL.)

Q. As I understand you, you had no contract or agreement with anyone to sell your land before you made your filing,—before you filed your sworn statement?     A. No, sir.

Q. You had no contract or agreement to sell it to Mr. Emery?     A. No, sir.

Q. Or to Mr. Colby?     A. No, sir.

Q. Or to Mr. Kester or to Mr. Kettenbach?

A. No, sir.

Q. And you had no contract or agreement to sell it before you made your final proof?     A. No, sir.

Q. Now, when was it you concluded to sell your land in relation to the time you made your final proof? [615—285]

A. I saw my wife at noon, and I says, “I am going to prove up this afternoon,” I says, “will you sign a mortgage so we can get the money from the bank?” And I says, “I made arrangements with Emery to get the money and we can prove up on it all right.” Well, she considered awhile, and then she says, “No, I won’t do it,” she says, “I won’t sign no mortgage.” “Well,” I says, “what will I do? I will have to prove up this afternoon. I will have to ask Emery if he can sell it for us.” And so after we proved up on it I says, “Fred, is there any chance to sell this land now?” He says, “I don’t know.” He says, “I can find out.” He says, “There is always something selling; perhaps somebody will buy it.” He says, “I will see. Maybe it will take a little



(Testimony of Frederick W. Newman.)

time.” “Well,” I says, “will you want a mortgage?” “Well,” he says, “no.” I asked him,—requested him to get the money for a few days, until I decided what to do, whether to mortgage the place or not. And so I went and attended to the furnace, and I says, “Fred, if you can find anybody to buy that you go ahead and sell it, because my woman won’t sign a mortgage.”

Q. Then, the affidavit which you made as follows: “That I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself,” that affidavit was true, was it?      A. Yes, sir.

Q. It was true at the time you made it?

A. Yes, sir.

Q. And at the time you made your final proof?

A. Yes, sir.

Q. And it is still true?

A. Yes, sir. [616—286]

Redirect Examination.

(By Mr. GORDON.)

Q. Mr. Newman, you signed and acknowledged the deed the day that you sold your land, as I understand. Now, did your wife sign it the same day?



(Testimony of Frederick W. Newman.)

A. I think she did. I think that evening I went home and she signed it that evening.

Q. You stayed at home with the children while she came down and signed it? A. Yes, sir.

Q. You remember just exactly how long it was after you proved up before you signed the deed, do you? A. No, I don't know just exactly.

Q. Half an hour?

A. Oh, I guess it was longer than that.

Q. Was it an hour?

A. Well, I don't exactly know how long a time I spent in the furnace there.

The SPECIAL EXAMINER.—Well, give the best opinion you can in regard to it.

WITNESS.—Well, I should judge about two hours,—an hour and a half or two hours.

Mr. GORDON.—Q. Now, what else did you have to pay out of this \$200.00 that Mr. Emery gave you besides the \$100.00 that you paid to him for a location fee? A. Well, the advertising.

Q. Oh, they had advanced that to you, had they?

A. He did. No, I paid that myself. He advertised it for me and I asked him what that advertising was. I met him down town and I says, "What will that bill come to?" So I paid Emery the money myself.

Q. Well, that came out of the \$100.00?

A. Yes, it practically would. That was my expense bill. [617—287]

Q. That came out of the \$100.00 which you had left from the \$200.00?

(Testimony of Frederick W. Newman.)

A. Well, I had that already paid, you know, before I got that money, and before I sold the land.

Q. Well, how much did you really make out of your claim?

A. Well, I don't know. I don't think I have much over \$75 or \$80.00 or \$85.00,—I don't know how much.

Q. Did you only make \$30.00?

A. Well, I don't know.

The SPECIAL EXAMINER.—Give your best opinion about it.

WITNESS.—I think I realized more than \$30.00 out of it, but I couldn't exactly say.

Mr. GORDON.—Q. Do you remember making an affidavit before Mr. S. F. O'Fallon on November 3, 1905? A. Yes.

Q. Did you read that affidavit before you signed it?

A. I think I did. He was writing it down in my presence.

Q. And you read it after he got through?

A. I think I looked at it.

Q. Well, do you remember whether or not,—

A. I am pretty sure he handed it to me.

Q. Do you remember whether or not you made this statement in the affidavit,—I will read it to you, and then hand it to you. Referring to the conversation you had with Emery and Colby after you made your proof: "Emery and Colby told me in Barnett's office that the deed was to be made to W. F. Kettenbach and George H. Kester. That was the first I knew

(Testimony of Frederick W. Newman.)

that Kettenbach and Kester had anything to do with the claim, or that it was sold to them. I think it was probably half an hour after I proved up before I signed the deed. I think the check for \$200.00 given me by Colby was on the Lewiston National Bank. I cashed the check the next day and gave Emery \$100.00 due him for locating me. [618—288] I really only received \$30.00 for my claim, and I paid my own expenses to the timber, which was about \$10.00, leaving me \$20.00 clear money out of my claim.” Do you remember whether or not you made that statement, and whether or not it was true?

A. Oh, I must have made it. When I read that statement over I think that is just exactly the way I stated it there.

Q. Well, I am not trying to catch you at all.

A. I remembered it better then, what my expenses was, better than I do to-day.

Q. Well, does that refresh your recollection? Do you remember it now?

A. I remember it now, since you read it there. I think that is the exact affidavit that O’Fallon had written.

An adjournment was thereupon taken until tomorrow morning at ten o’clock. [619—289]



On Friday, the 26th day of August, 1910, at ten o'clock A. M., hearing was resumed.

**[Testimony of Daniel W. Greenburg, for  
Complainant.]**

DANIEL W. GREENBURG, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Daniel W. Greenburg?

A. Yes, sir.

Q. Where do you reside, Mr. Greenburg?

A. Lewiston, Idaho.

Q. How long have you resided at Lewiston?

A. Why, I have made my home here for more than 30 years.

Q. What is your occupation?

A. Newspaper man.

Q. And were you engaged in the same business in April, 1904?

A. I think I was following that business at that time.

Q. Were you employed on a newspaper at that time?

A. Well, either then or about that time. I don't just quite remember whether I was off the job or not then.

Q. Can't you remember whether or not you were employed on the 25th of April, 1904?

A. Why, I think I was; I couldn't say, because I had taken some vacations.

Q. Well, was it just a vacation you had taken, or

(Testimony of Daniel W. Greenburg.)

was it that you were not employed?

A. Why, I think it was a vacation.

Q. Are you married, Mr. Greenburg?

A. Yes, sir.

Q. You took up a claim under the timber and stone act, in April, 1904, did you?

A. Yes, sir. [620—290]

Q. Will you state the circumstances of taking up the timber claim—what you did to initiate that claim? A. Yes, sir.

Q. Please do so.

A. Why, at that time—I presume the time I made my filing? Is that the date?

Q. Yes.

A. I offered my filing in the land office for a timber claim.

Q. Well, now, had you done anything preparatory to making that claim, some time before that?

A. Yes, sir.

Q. Well, who first spoke to you about taking up a claim?

A. Why, I first spoke to Mr. Dwyer, and others.

Q. William Dwyer? A. Yes, sir; and others.

Q. Now, when was that you spoke to Mr. Dwyer?

A. Oh, for perhaps a year previous.

Q. And did Mr. Dwyer have any claim that he could locate you on during that year?

A. He thought he could, yes. I told him I wanted to get one and would like to have him look out for me and see whether he could locate me. He told me he would charge a location fee.

Q. And that was a year before you located?

(Testimony of Daniel W. Greenburg.)

A. Well, something like a year. Probably it might have been more.

Q. And you were to pay him a location fee?

A. Yes, sir.

Q. Of how much?      A. \$100.00.

Q. Did Mr. Dwyer, after that first conversation you have referred to, come to you later and tell you he had a claim he could locate you on? [621—291]

A. Yes, sir.

Q. When was that?

A. I couldn't say exactly the time; probably within five or six months afterwards.

Q. Well, what did he say then?

A. He said all right. He wanted to know if I would go and see it, and I said yes.

Q. Now, were you connected with any newspaper at that time?

A. Well, sir, I don't remember whether I was or not. I know that I had been employed, not regular, on "The Teller."

Q. That is one of the dailies here?

A. Yes, sir; and I had been off and on that job for a long time.

Q. Were you a reporter at that time?

A. Yes, sir.

Q. Well, now, what else did Mr. Dwyer say to you? What arrangements did he make with you? Tell what happened. He didn't come to you and just say "all right."

A. Oh, we didn't have any arrangements at all. He just simply said he could locate me on a good



(Testimony of Daniel W. Greenburg.)

claim, the one that I thought he could satisfy me on that would be all right. It seemed like timber locations then were a good thing in those days. Everybody was locating on claims. I took all those things under consideration, concerning the fact that he had been recommended as locating a number of people. He had been spoken of as having located quite a number of people.

Q. I can't quite hear you.

A. I say he had been spoken of as having located quite a number of people, and I took the matters under consideration, that this location would be all right.

Q. At the time that you went to view this land, did you have enough money with which to purchase a timber claim? [622—292]

A. Well, I probably didn't have enough, but I probably knew that I could get it.

Q. Where did you know that you could get it?

A. Oh, I could get it most any place in Lewiston.

Q. And did you go to view the claim—the one that you located? A. Yes, sir.

Q. Now, state whether you went alone or with someone. A. I went with Mr. Dwyer.

Q. Anyone else? A. No, sir.

Q. Now, where did you go?

A. I went to Orofino.

Q. What's that? A. Orofino.

Q. Did you go to Orofino with him by rail?

A. Yes, sir.

Q. And how far was the claim from Orofino?

(Testimony of Daniel W. Greenburg.)

A. Well, I couldn't say exactly, probably 40 or 50 miles; something like that.

Q. How much?

A. 30 or 40 miles—I couldn't recall—I couldn't say.

Q. And did you go to any other town after leaving Orofino?

A. No, we didn't go to any other town.

Q. How did you travel from Orofino to your timber claim?      A. Horseback.

Q. And how long were you gone from Orofino into the timber and then return to Orofino?

A. Oh, a couple of days, all told—two or three days.

Q. Who furnished the rig in which you traveled?

A. Mr. Dwyer had somebody furnish it; I don't know who it was.

Q. Was there anyone went to the timber from Orofino with you and Mr. Dwyer? [623—293]

A. No, sir.

Q. And who paid the expenses of that excursion?

A. I paid my own personal expenses.

Q. You mean you paid your hotel bill?

A. Yes, sir.

Q. Did you pay anything else?

A. I paid for my horse, yes, sir.

Q. Now, what month was that that you went to the timber?

A. I couldn't say. I couldn't recall, just now.

Q. Well, you filed in April, 1904?

A. Well, I think possibly it might have been three

(Testimony of Daniel W. Greenburg.)

or four months before, but I am not sure.

Q. Well, was it in the winter time, near Christmas, or was it in the fall?

A. Well, no, it wasn't Christmas. It was fair weather; the weather was fair at the time I was up there.

Q. How is that?

A. The weather was fairly good at the time I was there. I couldn't recall whether it was the spring or the fall.

Q. In your testimony before the land office you stated that you went over this land October 13th, 1903. Does that refresh your recollection?

A. Why, it is possible that that was the time that I had gone over it. I couldn't recall right now.

Q. Now, you returned to Lewiston?

A. Yes, sir.

Q. And were you advised that the land on which you were to file later was not open for entry at that time?

A. I think—I don't just remember how it came up, but he said as soon as it was ready to file on it he would let me know.

Q. Now, did you see any other people up there in the timber that you knew? [624—294]

A. Oh, I seen people whom I didn't know.

Q. How is that?

A. People whom I didn't know. I didn't see any one I knew, particularly.

Q. Mr. Greenburg, I show you timber and stone lands sworn statement signed Daniel W. Greenburg,



(Testimony of Daniel W. Greenburg.)

dated April 25th, 1904, and ask you if you signed that paper, in duplicate, and filed them in the land office, on or about the date they bear?

A. Yes, sir; that is my signature.

Q. And you filed that in the land office the date that you made it? A. Yes, sir.

Q. I show you nonmineral affidavit signed Daniel W. Greenburg, of the same date, and ask you if you signed that affidavit? A. Yes, sir.

Q. I show you the testimony of Daniel W. Greenburg, taken at the final proof, dated July 15th, 1904, and ask if that is your signature to that paper?

A. Yes, sir.

Q. And the cross-examination, taken at the same time, signed Daniel W. Greenburg. Is that your signature? A. That is my signature.

Q. Did Mr. Dwyer give you a description of that land at any time?

A. Yes, sir, I think I had a description.

Q. What did you do with it?

A. I didn't do anything with it; I kept it.

Q. Who prepared the sworn statement that you have identified here?

A. Well, I couldn't say who prepared it, but I think my recollection has been refreshed on that now.

Q. I can't hear you. [625—295]

A. I say I don't remember who prepared it, but I think Mr. Dwyer did, or he said he would have that prepared for me.

Q. And do you remember where you received it?

A. I think I received it at the land office.

(Testimony of Daniel W. Greenburg.)

Q. You paid no fee for having that paper prepared?

A. Well, now, I couldn't recall whether I did or not.

Q. How long did you go to the land office before you were permitted to file your sworn statement?

A. I don't remember how long before it was, but quite a little while, I guess.

Q. Did you stand in a line?

A. I remember there was a line there. Yes, sir; I stood in line.

Q. And how long were you in that line?

A. Why, I myself personally, I didn't stay in all the time.

Q. Did you have someone stay in line for you?

A. Why, I occasionally got people to step in there and hold my place for me.

Q. Do you remember the names of any of the people you had?

A. No, I don't. I think there was fellows around there that were doing that.

Q. Did you pay them for that service?

A. Yes, sir.

Q. How much?

A. I couldn't say just how much now; I don't remember.

Q. How many days before you filed did you first go to the land office and join the line?

A. I don't remember.

Q. Well, was it the day before?

A. Oh, I think it was seven days, or more, probably.

(Testimony of Daniel W. Greenburg.)

Q. Was it seven days?      A. It might have been.

Q. What position did you hold in the line?  
[626—296]

A. Well, I don't remember, but probably I held—I think it was about No. 11; somewhere along there.

Q. Were you married at that time, Mr. Greenburg?      A. Yes, sir.

Q. Have you any children?      A. No, sir.

Q. How many?      A. No, sir.

Q. Do you remember of paying a fee in the land office when you filed your original papers?

A. Yes, sir.

Q. How much was that?

A. Why, something in the neighborhood of four hundred and odd dollars.

Q. No—I mean when you filed?

A. When I proved up?

Q. Well, I mean when you filed your first papers.

A. Oh, when I filed? I think it was \$8.00. I don't remember what it was, whether I paid a fee or not. I can't recall that.

Q. What was that last answer?

A. I say I don't remember whether I paid anything at that time or not, come to think about it.

Q. Well, do you remember whether or not your arrangements with Mr. Dwyer was that he was to pay those expenses?

A. You mean for the land office?

Q. Yes.      A. Yes, sir.

Q. Now, what am I to understand by that answer?

A. You asked me whether I knew whether Mr.



(Testimony of Daniel W. Greenburg.)

Dwyer was to pay that. I say I do know that, yes; that he wasn't to pay it.

Q. That he was not to pay it? A. Certainly.  
[627—297]

Q. And you say you don't know whether you paid it or not?

A. Oh, if there was any fee to pay there at the land office, I paid it myself.

Q. But you have no recollection of ever paying it?

A. No, I haven't.

Q. Do you remember when you filed your sworn statement that you also gave notice of publication?

A. Yes, I think I remember something about that; yes, sir.

Q. Do you remember naming the witnesses?

A. Yes, sir.

Q. Sir? A. Yes, sir.

Q. Who were the witnesses?

A. Well, I couldn't say just now. I think one of them was Bliss, and Mr. Dwyer was a witness, I guess, and Stanfield. That is my recollection.

Q. Now, were you notified of the time to make your final proof?

A. Yes— When was I notified?

Q. Were you notified?

A. Yes, sir, I was told when to come—three months, I think they said; something like that.

Q. And you made final proof? A. Yes, sir.

Q. And do you remember how much you paid in the land office at that time?

A. I think I paid in the neighborhood of \$400.00;

(Testimony of Daniel W. Greenburg.)

something like that.

Q. Well, do you know where you got that money from with which to pay it?     A. Yes, sir.

Q. Where?

A. Part of it I had myself; part I borrowed from the Lewiston [628—298] National Bank.

Q. Now, do you know how much you had yourself?

A. Why, I had a couple of hundred dollars or so; something like that.

Q. Did you have that in the bank?

A. I don't remember whether I was carrying an account there at that time or not.

Q. Did you carry a bank account anywhere else except the Lewiston National Bank?

A. No, sir.

Q. And with whom did you negotiate in the Lewiston National Bank for that loan?

A. Well, I think I negotiated with Mr. Kester, the cashier at the time.

Q. And how long before you made your proof did you make that negotiation?

A. Well, I couldn't say. I spoke to him of it some few days before—some time before that.

Q. Do you remember whether you gave a note for that?     A. Yes, sir.

Q. Do you know whether the note was to the bank, or to Mr. Kester?

A. Why, I presume it was to the bank. It was on one of their regular notes.

Q. You have no recollection whether it was to the bank or to Mr. Kester personally?

(Testimony of Daniel W. Greenburg.)

A. No, sir, I haven't. Oh, I never applied to Mr. Kester personally for it; I applied to the bank.

Q. Through Mr. Kester? A. Yes, sir.

Q. Well, what am I to understand by that? Did you have any preference as to who you got it from; or did you just want to get the money? [629—299]

A. Why, no; I just merely knew he was in the banking business; that that was the place I could get it.

Q. Do you know the period that note was to run?

A. Well, I think my recollection was that it was about 90 days; something like that.

Q. Now, have you any recollection as to whether you were employed on The Teller at that time—at the time that you made your proof?

A. I think I was, yes, sir. I can't recall just positively, but I think I was.

Q. Have you sold your timber claim?

A. Yes, sir.

Q. How long after you made your proof did you negotiate a sale of that?

A. Well, I had thought that— It was some time afterwards, but I didn't know just exactly the time until my attention was called to it.

Q. Well, can you approximate it?

A. No, I couldn't; from my own memory I couldn't say how long afterwards.

Q. Well, was it a week, or six months, or how near can you come to it?

A. Oh, I thought it was probably four or five months, or more. It must have been that long.



(Testimony of Daniel W. Greenburg.)

Q. With whom did you negotiate the sale?

A. I sold it to Mr. Kester.

Q. Directly to Mr. Kester?      A. Yes, sir.

Q. And do you remember how much he paid you?

A. I sold it for something about like \$1100.00.

Q. And was the note taken out at that time?

A. Why, I took my note up at the time that I sold it; yes, sir. [630—300]

Q. And did Mr. Kester pay you in cash or by check?

A. Why, I couldn't recall now how it was.

Q. Where did you make this settlement—at the bank?      A. Yes, sir; at the bank window.

Q. At what?

A. At the paying window at the bank.

Q. Did you sign the deed at the paying window of the bank?

A. Well, I couldn't recall whether I signed it there or not.

Q. Do you know who prepared the deed which you signed?      A. No, sir.

Q. Was it there when you went there to the bank?

A. Well, now, I don't know. I told them to make out the deed, but I don't know just who signed it. I can't remember now.

Q. Did you go over this timber claim when you were up there the first time?      A. Yes, sir.

Q. With whom did you go over it?

A. Mr. Dwyer.

Q. Anybody else?

A. No, sir; I don't think there was anybody else.

(Testimony of Daniel W. Greenburg.)

Q. Are you sure of that?

A. Oh, yes, I am sure there was nobody with me.

Q. Was Mr. Bliss up there?

A. I understood he was in the woods.

Q. Did you see him?

A. Well, I don't remember whether I saw him at the time or not.

Q. Did he go over the claim with you?

A. No, sir.

Q. Do you remember how much money you borrowed from the bank?

A. I think probably in the neighborhood of \$200.00—more or less.

Q. You haven't any definite recollection of how much you borrowed? [631—301]

A. No, I haven't.

Q. Had you ever borrowed any money from the Lewiston National Bank before?

A. Why, I don't remember whether I had before or afterwards. I don't remember. I had borrowed money time and again at the bank.

Mr. GORDON.—We offer in evidence the timber and stone lands sworn statement of Daniel W. Greenburg, dated April 25th, 1904, the nonmineral affidavit of Daniel W. Greenburg, bearing the same date, the testimony of Daniel W. Greenburg taken at the final proof, July 15th, 1904, the cross-examination of Daniel W. Greenburg at the final proof, all of which papers the witness has identified, the testimony of and cross-examination of the witnesses at final proof, the Receiver's Receipt and the Register's

(Testimony of Daniel W. Greenburg.)

Certificate, dated July 15th, 1904, a certified copy of the patent issued to Daniel W. Greenburg December 31st, 1904, all relating to the entry of Daniel W. Greenburg of the southwest quarter of section 17, township 39 north, of range 5 east, Boise meridian.

Mr. TANNAHILL.—The defendants severally object to all the documents offered in evidence in so far as they relate to bills No. 388 and 407, upon the ground that they are irrelevant, incompetent and immaterial, and not involved in these two particular actions. And the defendants further severally object to the introduction of any of the final proof papers in evidence, especially the testimony of claimant, Daniel W. Greenburg, the cross-examination of claimant, Daniel W. Greenburg, the testimony of the witness William Dwyer, and the cross-examination of the witness William Dwyer, the testimony of the witness Edwin Bliss, and the cross-examination of the witness Edwin Bliss; upon the ground that they relate to the final proof, long after the filing of the sworn statement, and they are irrelevant and immaterial. The defendants severally waive any further identification of the papers offered. [632—302]

Said documents were thereupon marked by the Reporter as Exhibits 14, 14A, 14B, 14C, 14D, 14E, 14F, 14G, 14H, 14I, 14J, 14K, 14L, 14M.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Greenburg, how long did you say it was after you made your final proof before you sold



(Testimony of Daniel W. Greenburg.)

your land?      A. Well, I didn't—

Q. About how long?

A. I didn't know exactly; I thought it was some time afterwards, because it is so long ago that I have forgotten it. I understood it was a month afterwards, but I have forgotten it.

Q. Was there any contract or agreement between you and Mr. Kester or Mr. Kettenbach or Mr. Dwyer, that you should sell your land, before you filed your sworn statement?      A. No, sir.

Q. And no such a contract prior to the time you made your final proof?

A. No, sir, none whatever.

Q. Then, the affidavit you made when you filed your sworn statement, in substance that "I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that statement was true at the time you filed your sworn statement, was it?

A. Yes, sir.

Q. And it was true at the time you made your final proof?      A. Yes, sir.

Q. And it is still true?

A. Yes, sir. [633—303]

**[Testimony of Charles Dent, for Complainant.]**

CHARLES DENT, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. Your name is Charles Dent?      A. Yes, sir.

Q. How old are you, Mr. Dent?

A. What is it?

Q. How old are you?      A. 63.

Q. Where do you reside?

A. On the North Fork of the Clearwater.

Q. In Idaho?      A. Yes.

Q. What county?      A. Nez Perce.

Q. How long have you resided there?

A. 24 years.

Q. What is your occupation?

A. Oh, I farm a little, and blacksmith a little, and I used to raft some down the river. I have got a little stock.

Q. What was your occupation in June, 1903?

A. Well, that is what I have been doing all the time.

Q. Have you a family?      A. Yes, sir.

Q. Of what did your family consist in 1903?

A. Oh, I have three children.

The SPECIAL EXAMINER.—Speak a little louder, Mr. Dent.

WITNESS.—I have three children, I say.

Mr. GORDON.—Q. Now, you have a ranch up there?      A. Yes, sir. [634—304]

(Testimony of Charles Dent.)

Q. How large is it?      A. 160 acres.

Q. Is it a homestead?      A. Yes, sir.

Q. Do you know Mr. George H. Kester, one of the defendants in this suit?      A. Yes, sir.

Q. How long have you known him?

A. I have known him for some five years, I guess.

Q. Are you related to him in any way?

A. No.

Q. Either by marriage or otherwise?      A. No.

Q. Do you know Mr. William F. Kettenbach, one of the defendants in this suit?      A. Yes, sir.

Q. How long have you known him?

A. Well, I have known him 15 years, I guess, or 16.

Q. Are you related to him in any way?

A. Not in any way.

Q. Are you acquainted with Mr. Dwyer, one of the defendants?      A. Yes, sir.

Q. How long have you known him?

A. I have known him for 10 or 12 years, I guess, anyway.

Q. Did you ever have any business relations with any of them?      A. No, sir.

Q. Do you remember taking up a claim or filing an application to enter upon a timber claim, April 2d, 1903?

Mr. TANNAHILL.—The defendants severally object to any evidence of the witness relative to taking up a timber claim so far as the evidence relates to bill 388 and 407, upon the ground that the entry of the witness is not involved in those two



(Testimony of Charles Dent.)

particular actions, and the [635—305] evidence is irrelevant and immaterial.

The SPECIAL EXAMINER.—Answer the question. Read the question.

The Reporter thereupon repeated the last question.

WITNESS.—Yes, sir.

Mr. GORDON.—Q. I show you timber and stone lands sworn statement of Charles Dent, dated April 2d, 1903, and ask you if you signed that statement and filed it in the land office about the date it bears—in duplicate? A. Yes, sir.

Q. I show you the notice for publication of Charles Dent, and the nonmineral affidavit of Charles Dent, dated April 2d, 1903, and ask you if you signed that affidavit and filed the paper in the land office about the date it bears, April 2d, 1903?

A. Yes, sir.

Q. I show you the testimony of Charles Dent at the final proof at the land office at Lewiston, dated June 23d, 1903, and ask you if that is your signature to that paper? A. Yes, sir.

Q. Is that your signature to the cross-examination, taken at the same time? A. Yes, sir.

Q. Mr. Dent, what induced you to take up a timber claim?

A. Oh, I don't know. Everybody was taking claims, and I thought I would take one. Mr. Emory was locating up there.

Q. What's that?

A. Mr. Emory was locator at that time, and he

(Testimony of Charles Dent.)

asked me if I had ever taken a claim, and I told him no, and he wanted to know why I didn't take one. Well, I told him I didn't know as I had much use for one; I couldn't sell it. "Oh, yes," he said, "I could sell a claim most any time." So I concluded I would take one.

Q. Did he tell you how much the claim would net you?

A. Oh, I told him if I could get \$100.00 for the claim I wouldn't [636—306] mind taking one. "Well," he says, "you can easy enough get \$100.00." He says, "Most anybody will give you \$100.00 for it."

Q. Did you have the money at that time with which to purchase a timber claim?

A. I had part of it; I didn't have enough.

Q. I mean when you first spoke to Mr. Emory about it?      A. Yes.

Q. How much did you have at that time?

A. Oh, I don't remember now how much I did have. I didn't have quite enough, I know, and I borrowed some from Mr. Colby.

Q. Was there anything said about a location fee?

A. No.

Q. Did you ever pay a location fee?      A. No.

Q. You were never asked to pay one?

A. No, sir.

Q. Who located you on the timber claim that you filed upon?      A. Mr. Emory.

Q. Mr. Fred. Emory?      A. Yes, sir.

Q. What was his business at that time?

(Testimony of Charles Dent.)

A. Well, he was running a sawmill here in town.

Q. And how far is this timber claim and where you live from Lewiston? A. About 65—

Q. Oh, just approximately?

A. About 65 miles; something like that, I think; I couldn't say exactly.

Q. Now, this first conversation you had with Mr. Emory about the timber claim, was that at your house? A. Yes, sir.

Q. He came there and introduced the subject himself; is that [637—307] correct?

A. Well, he usually stopped there. I keep a stopping-place there, and he usually stops there.

Q. As I understand you, he introduced the subject himself, though?

A. Well, him and I got to talking about it, yes.

Q. Now, was there anything said between you and Mr. Emory on the first occasion you talked about this claim as to who would pay all the expenses of taking up the claim? A. Oh, no.

Q. And purchasing it? A. No.

Q. Are you sure of that? A. Yes.

Q. Did Mr. Emory ask you what you would take for your right?

A. No, I don't think he did. I don't think he did.

Q. Is your recollection clear on that subject?

A. Yes, sir, as far as I can remember now.

Q. Do you know with whom Mr. Emory was engaged in business at that time?

A. No, I don't know, only Mr. Colby, I think, maybe he was engaged in business with him. He



(Testimony of Charles Dent.)

was keeping books for him.

Q. Did you and Mr. Emory discuss at your first conversation about the claim, where you would get the balance of the money with which to pay for the claim?     A. No.

Q. Mr. Dent, do you remember of ever being called upon by Mr. Francis M. Goodwin, a Special Agent of the general land office?     A. Yes.

Q. Did he call upon you at your home?

A. What is it?

Q. Did he call upon you at your home? [638—308]     A. Yes, sir.

Q. And do you remember whether that was in the summer of 1905?

A. 1905? Yes, I think it was.

Q. Do you remember of making an affidavit for him?     A. Yes, sir.

Q. Do you remember what you said in that affidavit?

A. Well, I don't know as I can repeat it now, what I did say.

Q. You told the truth as near as you could, did you?     A. As near as I knew.

Q. Do you remember whether or not you made an affidavit and delivered it to Mr. Goodwin July 22d, 1905, in which you said, "I was located on a timber claim by Fred. Emory"?     A. Yes.

Q. And that "I had an understanding with Mr. Emory by which I was to take up a timber claim, he bearing all the expenses, and I was to receive \$100.00 for my right"?     A. No.

(Testimony of Charles Dent.)

Q. You say you didn't make an affidavit to that effect, sir?     A. No.

Q. Do you remember whether or not in that affidavit you made this statement: "I talked to Mr. Emory before I made my entry. Mr. Emory came to my place and asked me what I would take for my right, and I told him \$100.00, the amount I did receive."     A. I told him I would take \$100.00, yes.

Q. And you got \$100.00?

A. Yes, I got \$100.00.

Q. Did you put up any of the expenses yourself?

A. Yes, sir.

Q. How much?

A. Oh, I don't know how much now.

Q. Was it \$50.00?

A. Yes, about, I guess. [639—309]

Q. And that is all you expended in the claim in any manner at all of your own money?

A. Let's see—yes—yes.

Q. Who paid your expenses coming from home to Lewiston when you filed?     A. I paid it myself.

Q. Did you get the money from anybody to pay it?     A. No, sir.

Q. And who prepared the sworn statement for you that you identified here a few moments ago?

A. Why, I don't know now.

Q. Did you come from your home to Lewiston alone, or did someone come with you?

A. I came alone.

Q. Did you meet Mr. Fred. Emory when you arrived here?

(Testimony of Charles Dent.)

A. No. Oh, yes, I met him after I got here; yes.

Q. Did you meet him by appointment? A. No.

Q. Did you know what it would cost to take up a timber claim? A. Yes.

Q. How much?

A. I don't know now what it was.

Q. You have no idea what it cost?

A. Well, it is \$60.00, or something like that, I guess. I don't remember what it was.

Q. What do you mean? \$60.00 for what?

A. Well, for filing, and so on.

Q. Do you mean was that all the expense that was incurred altogether—in purchasing the land, too?

A. Yes.

Q. Do you remember how much of that \$60.00 you paid when you made your final proof? [640—310]

A. No, I don't remember.

Q. Do you remember how much money you paid in the land office the first visit you made there?

A. When I went to prove up?

Q. No—when you went to file.

A. No, I don't remember now.

Q. Have any idea how much it was?

A. No, I ain't.

Q. Did you ever go over this land?

A. Oh, yes.

Q. With whom?

A. I went over the land years ago.

Q. Well, I mean this particular claim?

A. Well, yes. I used to work up there, and I have been on it many times.



(Testimony of Charles Dent.)

Q. Did you go over it with Mr. Emory?

A. Yes.

Q. Sir?      A. Yes, sir.

Q. When?

A. Oh, when he was up there; when he was working there; I was up there with him.

Q. Did you make a special visit for the purpose of going over this land and inspecting the timber on it; or did you just happen to be in that locality?

A. Oh, I just happened to be in there.

Q. And you are sure that you and Mr. Emory went over this claim yourself, are you?

A. Yes, sir.

Q. Do you know where you received this sworn statement that you have identified?

A. No, I don't remember that. [641—311]

Q. Did you go to a lawyer's office to get it?

A. No. I think it was home.

Q. Not before you filed, was it?

A. Oh, no, not before I filed.

Q. Now, where did you get it?

A. Where did I get it?

Q. Yes.

A. Well, I don't know where I got it now. I don't remember.

Q. You came down to Lewiston for the purpose of filing on a timber claim, did you, Mr. Dent?

A. Yes, sir.

Q. And you knew that you had to have some papers to file, did you not?      A. Yes.

Q. Now, haven't you any recollection of what

(Testimony of Charles Dent.)

preparation you made to have those papers filed, or prepared?

A. No, I don't remember what I did do.

Q. Do you remember going to any lawyer's office and asking them to prepare you a set of filing papers? A. I don't remember it now.

Q. Did you have a description of the land?

A. No, nothing more than just what Emory told me; he gave me the description.

Q. Well, how did he give you the description? Did he just repeat it to you? A. Yes.

Q. And did you make a memorandum of it?

A. No.

Q. And did you have such a description that you could go to a man and tell him to prepare you a deed of that, and then recite the description?

A. Oh, yes. [642—312]

Q. How? A. Yes.

Q. Can you do it now?

A. I don't know as I can do it now. I have forgot the sections, even, now.

Q. Do you know what section this land is in?

A. I don't know what section it is in. I couldn't tell to save my life.

Q. Do you know what township it is in?

A. I don't know that, either.

Q. Do you know what range it is in? A. No.

Q. Do you know what section and township your homestead is in? A. 38-3—38-2.

Q. And how far is this from your homestead?

A. Oh, it is about 13 miles, I guess.

(Testimony of Charles Dent.)

Q. Then, you returned to your home after filing your sworn statement and the other papers in the making of the original entry?     A. Yes, sir.

Q. And how long after that was it that you made your final proof?

A. Well, I couldn't tell you that, either, now.

Q. Well, was it a month, or six months, or a year, or how long?

A. I guess it must have been a year; something like that.

Q. That is, between the time you made your entry—     A. Yes, sir.

Q. And the time you made your final proof?

A. I think so.

Q. Who notified you as to the time you were to make proof?     A. Who notified me?

Q. Yes, sir.

A. Well, I don't know; I think it was Mr. Emory, though, told me.

Q. And you again came to Lewiston? [643—313]

A. Sir?

Q. You again came to Lewiston?     A. Yes.

Q. And at that time had you made any arrangements for getting the final proof money?

A. No, sir.

Q. None whatever?     A. No.

Q. And had you ever borrowed any money in Lewiston before then?     A. No.

Q. You never had?     A. No.

Q. Speak a little louder.     A. No, sir.

Q. Did you have an engagement to meet anybody at



(Testimony of Charles Dent.)

Lewiston?      A. No, sir, I didn't.

Q. And did you meet anyone here in Lewiston at that time that you knew?      A. Yes.

Q. Who did you meet?      A. I met Mr. Colby.

Q. Had you ever met Mr. Colby before?

A. Nothing only I was acquainted with him.

Q. Now, did you meet Mr. Colby casually on the street?      A. Yes.

Q. And did you have a conversation with him about your timber claim?

A. No conversation, only I asked him to loan me some money, and he let me have it.

Q. How much did you ask him to loan you?

A. I think it was \$100.00.

Q. \$100.00? [644—314]      A. Yes.

Q. How much money did you have with you?

A. Oh, I had \$60.00 or \$70.00, or so.

Q. \$60.00 or \$70.00?      A. Yes, sir.

Q. Did you give Mr. Colby a note for this \$100.00?

A. No, sir.

Q. Did you borrow any money from anybody else?

A. No, sir.

Q. Did you pay any interest on this money?

A. I didn't pay no interest, because I sold him the claim.

Q. The same day?      A. Yes.

Q. There wasn't anything said about selling the claim, though, when you got the money from him, was there?      A. No, sir—nothing.

Q. And you had had no arrangements whatever with Mr. Colby before you got this money?

(Testimony of Charles Dent.)

A. No, sir.

Q. Were you in any way exercised by the fact that you came here to prove up on a timber claim, and that you had made no arrangements to get the money?

A. No, sir, I hadn't made no arrangements with anybody.

Q. You didn't care much whether you proved up on it or not, did you?      A. No.

Q. Now, can you tell what your expenses had been up to that time, of taking up this claim?

(No answer.)

Q. How much money had you spent in coming down here and going back on these two trips?

A. Oh, I don't know. I couldn't tell. [645—315]

Q. \$30.00?      A. I suppose—something like that.

Q. Then, you went to the land office and you made your proof?      A. Yes, sir.

Q. Now, when you got this money from Mr. Emory, did he just have it on his person at that time?

A. Yes—Mr. Colby.

Q. Mr. Colby—excuse me.      A. Yes.

Q. Now, do you remember that you had \$400.00 that you paid in the land office when you made proof?

A. \$400.00?

Q. Yes, sir.      A. No, I didn't have \$400.00.

Q. Well, you must have had, or somebody had it, because you paid \$400.00 for that land in the land office.

A. Well, of course, I must have had it, if that is what it is.

Q. And did Mr. Colby go to the land office with you

(Testimony of Charles Dent.)

when you made proof?

A. Why, yes, he went to the land office with me, but he only just went upstairs and right back again; he didn't stay there.

Q. Where did he give you this money?

A. Down on the street.

Q. In front of the land office?

A. I don't know. It wasn't exactly in front of the land office.

Q. How far from the land office?

A. Oh, I don't know now. I couldn't tell just where it was I met him.

Q. Were you on your way to the land office when you met him?

A. No; I was just walking around town.

Q. Alone? A. Yes. [646—316]

Q. Did Mr. Colby wait outside for you—outside of the land office for you, while you were making your proof? A. No.

Q. Now, who else was at the land office that you knew while you were there?

A. Why, Mr. Emory was there, and Mr. Charlie Smith. That's all the men that was there that I remember.

Q. Now, did you and Mr. Charlie Smith and Mr. Emory leave the land office together? A. Yes, sir.

Q. How long after you left the land office did you make a deed for your land?

A. Oh, an hour, I suppose.

Q. Was this in the afternoon or in the morning?

A. Well, I don't know now.



(Testimony of Charles Dent.)

Q. Where did you go to make the deed? Where did you sign the deed?

A. We went to Mr. Barnett.

Q. That was right across the street from the land office? A. Yes, sir.

Q. Now, state what was said about the selling of this land when you came out of the land office; state the conversation that was had.

A. Well, I told Mr. Colby I would sell him the claim, and he says all right, he would take it.

Q. And did he give you the \$100.00 then?

A. Yes.

Q. Well, how much did you get out of this claim, after you paid your expenses? A. I got \$100.00.

Q. But you had spent some money, hadn't you?

A. Yes.

Q. And you sold to Mr. Emory? [647—317]

A. I sold to Mr. Colby.

Q. You sold to Mr. Colby? A. Yes, sir.

Q. And do you know to whom you made the deed?

A. No, I don't know who I made the deed to.

Q. Do you know that you made the deed to Kester and Kettenbach? A. I don't know. [648—318]

Q. Did you read the deed? A. No.

Q. You read it?

A. No, I didn't read the deed; I just signed it,—I think I signed it.

Q. Did Mr. Emery give you the \$100.00 right at that time?

A. He give me the \$100.00 after he come out on the street.

(Testimony of Charles Dent.)

Q. Was Colby there?      A. Yes, sir.

Q. Was anything said about the money you had gotten from Colby?      A. Anything said about it?

Q. Yes.      A. No.

Q. The transaction turned out just exactly as you expected it would and understood it would from the first time you talked with Mr. Emery, did it not?

A. Well, I talked to Mr. Emery when he was at my place, where I would get the money, and he told me he could let me have the money, so I didn't pay no more attention to it.

Q. And, as I say, the transaction turned out just as you understood it would from the start?

A. Yes. He owed me quite a lot of money at that time; he had been stopping there a good deal.

Q. Have you any recollection of spending any money of your own for the expenses of taking up this claim?      A. No.

Q. You understood from your first talk with Mr. Emery that you were to make \$100.00 out of this, did you not, sir?

A. Well, I understood I could get \$100.00 for it.

Q. You wouldn't have taken it up if you hadn't been told that, would you?      A. No. [649—319]

Mr. GORDON.—Mr. Tannahill, I do not remember whether you made the usual waiver of further identification of the papers that were offered of the former witness.

Mr. TANNAHILL.—Yes, I did.

Mr. GORDON.—If you didn't, that stipulation will go as to those papers too?



(Testimony of Charles Dent.)

Mr. TANNAHILL.—Yes; but I made it.

The SPECIAL EXAMINER.—I think he made it. I think the record will show that he made it.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Charles Dent, dated April 2, 1903, in duplicate, the nonmineral affidavit of Charles Dent, and the notice of publication, of the same date, the testimony of Charles Dent, given on final proof, dated June 23, 1903, and the cross-examination thereof, of the same date, the testimony of the witnesses and the cross-examination of them at final proof, the receiver's receipt and the register's certificate, dated June 23, 1903, certified copy of patent issued to Charles Dent, dated August 3, 1904, all relating to the claim of Charles Dent of the north half of the northeast quarter and the north half of the northwest quarter of section 14, township 39 north of range 3 east, Boise meridian. We also offer certified copy of deed, dated June 23, 1903, made by Charles Dent to William F. Kettenbach and George H. Kester, consideration \$1000.00, conveying the north half of the northeast quarter and the north half of the northwest quarter of section 14, township 39 north of range 3 east, Boise meridian, acknowledged before H. K. Barnett, notary public, the date the deed bears, and recorded in the office of the recorder of Shoshone County at the request of George H. Kester, August 10, 1903.

Said above mentioned documents were thereupon marked by the reporter as Exhibits 15, 15A, 15B, 15C,



(Testimony of Charles Dent.)

15D, 15E, 15F, 15G, 15H, 15I, 15J, 15K, 15L, 15M, and 15N.

Mr. TANNAHILL.—The defendants severally object to the introduction of any of the documents in evidence as offered, in so far as they relate to bills numbered 388 and 407, upon the ground that the entry is not [650—320] involved in these particular actions, and they are irrelevant and immaterial. And the defendants severally object to the introduction of any of the final proof papers in evidence in support of either of the actions or bills, and especially the testimony of claimant Charles Dent, the cross-examination of the claimant Charles Dent, the testimony of the witness Charlie Smith and the cross-examination of the witness Charlie Smith, the testimony of the witness Fred Emory, and the cross-examination of the witness Fred Emory, and the proof of publication, upon the ground that they are matters occurring subsequent to the filing of the sworn statement, and are irrelevant and immaterial. The defendants severally waive any further identification of the papers.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Dent, I understand your first conversation with Mr. Emory was at your place, was it?

A. Yes, sir.

Q. What was that conversation, as near as you can remember?

A. Oh, I don't know; there wasn't much of a conversation about it. He was locating people up there,

(Testimony of Charles Dent.)

and we just got to talking about it, about taking up claims, and he says to me, he says, "You have never taken one up, have you?" And I says, "No." And he says, "Why don't you take up a claim?" And I told him I didn't know, I didn't know as I could sell it if I did take one up, and he says, "Well, you could easy enough sell it for \$100.00," he says, "anybody most would give you \$100.00 for it." Well, I told him I thought if I could get \$100.00 I would take up a claim, but I didn't want to take up a claim and hold it, because I didn't want to pay the tax on it and I didn't know when I could ever sell it.

Q. You meant if you could get \$100.00 over and above what the claim cost you? A. Yes.

Q. There was no understanding or agreement with him that you was to [651—321] sell your claim to him, was there? A. Oh, no.

Q. Or to anyone else? A. No.

Q. When was your next conversation with him; the next conversation I believe was when you asked him if you could borrow the money to prove up on, or something to that effect?

A. I told him I didn't have the money, and he said they could let me have the money if I needed it, Colby said; and he owed me about \$60.00 or \$70.00 then, Emory did, but he didn't just have it with him, so when I come down there I seen Mr. Colby and he let me have the money.

Q. What was your conversation with Mr. Colby?

A. Well, I just told him I wanted to borrow \$100.00, or whatever it was; I don't remember just



(Testimony of Charles Dent.)

what it was.

Q. It cost you about \$400.00 to make your final proof, to pay for your land?

A. I know I had quite a lot of money of my own, and I borrowed enough of him to pay the expenses, whatever it was; I can't remember what it was.

Q. I see. Now there was no understanding or agreement between you that you was to sell your land at that time, was there?      A. Oh, no, no.

Q. Now, was there any further conversation with you and Mr. Colby, between yourself and Mr. Colby or Mr. Emory, before you made your final proof?

A. No.

Q. Then, what conversation did you have in regard to the claim, after you made your final proof?

A. I didn't have no conversation much; I just told Mr. Colby I would sell him the claim, and he said all right.

Q. Did you tell him what you would sell it to him for?      A. Yes.

Q. How much?      [652—322]

A. I told him if he would give me \$100.00 and pay me what it cost to prove up, he could have the claim.

Q. That was the first talk you had with either Mr. Colby or Mr. Emory regarding the sale of your claim?

A. Yes, sir.

Q. You had then proved up and had your final receipt, had you?      A. Yes.

Q. Then, your affidavit that you made at the time you filed your sworn statement, in substance, "That I have made no other application under said acts;



(Testimony of Charles Dent.)

that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that statement was true, was it?     A. Yes, sir.

Q. And it was true at the time you made your final proof?     A. Yes, sir.

Q. And it is still true?     A. Yes.

Mr. TANNAHILL.—That is all.

Mr. GORDON.—That is all, Mr. Dent. [653—323]

**[Testimony of Mrs. Edna P. Kester, for  
Complainant.]**

Mrs. EDNA P. KESTER, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

**Direct Examination.**

(By Mr. GORDON.)

Q. You are Mrs. Edna P. Kester?     A. Yes, sir.

Q. And the wife of Mr. George H. Kester, one of the defendants?     A. Yes, sir.

Q. You are also a sister of Mrs. Mamie P. White?     A. Yes, sir.

Q. Are you in any way related to Mr. William F. Kettenbach?     A. No, sir.

Q. Mrs. Kester, you took up a claim under the

(Testimony of Mrs. Edna P. Kester.)

timber and stone act April 25, 1904, did you not?

A. It was in April, 1904; I don't remember the date.

Q. I show you timber and stone land sworn statement, dated April 25, 1904, signed Edna P. Kester, and ask you if you signed and filed that paper in the land office about the date it bears?

A. I did. That is my signature. I don't remember the date.

Q. I show you nonmineral affidavit of the same date, signed Edna P. Kester. A. Yes, sir.

Q. That is your signature? A. Yes, sir.

Q. I show you the testimony of Edna P. Kester given on final proof, dated July 13, 1904, and ask you if you signed that paper? A. Yes, sir.

Q. And the cross-examination given at the same time. You signed that? A. Yes, sir.

Q. Mrs. Kester, who located you on that claim?

A. Mr. Dwyer.

Q. How long before you located did he take you over the claim? [654—324]

A. How long before I was located?

Q. I mean before you filed, did he take you over the claim?

A. It was in October that we went up into the timber.

Q. And who were of the party that went into the timber with you?

A. My sister, Mrs. White, and her husband, and my husband, Mr. Kester, and Mrs. Elizabeth White

(Testimony of Mrs. Edna P. Kester.)

and Mrs. Elizabeth Kettenbach, and Mrs. Hallett; I believe that was all,—and Mr. Dwyer and myself.

Q. Is it Mrs. Hallett?

A. Mrs. M. E. Hallett, yes.

Q. Mrs. Martha—?

A. Martha E. Hallett, yes, sir.

Q. Is she in any way related to the Kester family?

A. No, she is not related.

Q. Was she employed in the Kester family at that time?

A. No. Mr. Kester and I were boarding with her at that time. She is a dear friend of the Kester family, and we were boarding with her at that time.

Q. I assume your husband paid the expenses of your excursion to the timber, didn't he?

A. Yes, I made all arrangements with Mr. Kester. He didn't want me to take it up at first, but I persuaded him and asked him to give me the money, and he did.

Q. Did you pay a location fee, or didn't you have any location fee?

A. I don't remember as to the location fee.

Q. Were you in the lineup at the land office?

A. I was there the day we filed.

Q. Do you remember that there was a crowd of people at the land office that day?

A. I believe there was. All of our crowd were there that went up together.

Q. Did you have anyone to hold a position in the line for you?

A. Well, no, but I did I believe when I was not



(Testimony of Mrs. Edna P. Kester.)

well; I don't remember which date that was though. It wasn't when I filed though, [655—325] because I went there myself. No, I didn't have anyone to hold a place for me, because I was there when I filed myself.

Q. But was there someone held your place in line and you took that place the morning you filed?

A. No.

Q. Well, were there any persons ahead of you at the land office, and you had to wait a little while?

A. I don't remember as to that.

Q. You went right into the land office and filed when you got there? A. Yes, sir.

Q. Do you remember the time of day you made your filing?

A. I am quite sure it was in the morning, before noon.

Q. It was before twelve o'clock?

A. I think so.

Q. And the others of the party you have named that went to view the timber with you were there at the same time?

A. They were there, yes; they were there at the land office.

Q. Do you remember the time of making your final proof, that is, paying for the land? A. Yes.

Q. Do you remember how much you paid on that occasion?

A. It was something over \$400.00.

Q. And your husband gave you that? A. Yes.

Q. The morning you made your proof?

(Testimony of Mrs. Edna P. Kester.)

A. Yes, sir.

Q. Have you sold your claim, Mrs. Kester?

A. No, sir.

Q. Have you ever offered to sell it to anyone?

A. No, sir.

Q. You still have it?

A. I still have it. [656—326]

Q. Have you ever authorized your husband to sell your claim for you?      A. No, sir.

Q. Or anyone else?      A. No, sir.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement, dated April 25, 1904, of Edna P. Kester, the nonmineral affidavit, the notice of publication, of the same date, the testimony of Edna P. Kester taken at final proof, the cross-examination thereof, all of which have been identified by the witness, the testimony of the witnesses at final proof and the cross-examination of them, the other land office papers in the files in this case, the receiver's receipt and the register's certificate, dated July 13, 1904, certified copy of the patent issued to Edna P. Kester, dated December 31, 1904, all relating to the entry of the north half of the northeast quarter and the north half of the northwest quarter of section 14, township 38 north of range 5 east, Boise meridian.

Said above mentioned documents were thereupon marked by the reporter as Exhibits 16, 16A, 16B, 16C, 16D, 16E, 16F, 16G, 16H, 16I, 16J, 16K, 16L, and 16M.

Mr. TANNAHILL.—The defendants severally

(Testimony of Mrs. Edna P. Kester.)

object to each and all of the papers offered in so far as they relate to bills No. 388 and 407, upon the ground that they are irrelevant and immaterial, the entry of the witness not being involved in these two particular actions. And the defendants severally object to the final proof papers in so far as they relate to any of the actions pending, upon the ground that they are incompetent, irrelevant and immaterial, the final proof papers being described as the testimony of claimant Edna P. Kester, and the cross-examination of the claimant Edna P. Kester, the proof of publication, the testimony of the witness William Dwyer, and the cross-examination of the witness William Dwyer, the testimony of the witness Edwin Bliss, and the cross-examination of the witness Edwin Bliss, upon the ground that they are incompetent, irrelevant and immaterial. We also object to the affidavit of Edna P. Kester made upon final proof, upon the ground [657—327] that it is irrelevant and immaterial.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mrs. Kester, as I understand you, at the time you filed your sworn statement you had no agreement with anyone to sell your land to them?

A. No, sir, I had not.

Q. You did not take it up for the benefit of your husband?      A. No, sir.

Q. Or anyone else?      A. No, sir.

Q. And the affidavit that you made at the time you filed your sworn statement, "That I have made no



(Testimony of Mrs. Edna P. Kester.)

other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that was true at the time you made it, was it?     A. Yes, sir.

Q. And it was true at the time you made your final proof?     A. Yes, sir.

Q. And it is still true?     A. Yes, sir.

Q. And the affidavit that you made at the time you made your final proof: "That she purposes to purchase said land with her own money in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband or any other person, and that she has never made an entry under said act, or derived or had any interest whatever, [658—328] directly or indirectly, in or from a former entry made by any person or association of persons," that affidavit was true at the time you made it, was it?

A. Yes, sir.

Q. And it is still true?     A. It is still true.

Q. And you have never sold your land?

A. No, sir.

(Testimony of Mrs. Edna P. Kester.)

Q. And never contracted for the sale of it to anyone?     A. No, sir.

Q. And your husband gave you the money that you made your final proof with?     A. Yes, sir.

Q. And you purchased the land?     A. Yes, sir.

At this time a recess was taken until two o'clock.

[659—329]

At two o'clock P. M. the hearing was resumed.

**[Testimony of Mrs. Elizabeth White, for  
Complainant.]**

Mrs. ELIZABETH WHITE, a witness called on behalf of the complainant, being first duly sworn, testified as follows, to wit:

**Direct Examination.**

(By Mr. GORDON.)

Q. You are Mrs. Elizabeth White?

A. Yes, sir.

Q. Where do you reside, Mrs. White?

A. In Lewiston.

Q. How long have you resided in Lewiston?

A. In Lewiston?

Q. Yes.

A. Well, I have resided here the biggest part of my life,—since '71, I think, around Lewiston and in Lewiston.

Q. Are you married?

A. Well, I am a widow; I am not married.

Q. Are you related to Mr. William J. White?

A. Yes, William J. White is my son.

Q. And Mr. William F. Kettenbach married a daughter of yours?

(Testimony of Mrs. Elizabeth White.)

A. William Kettenbach married my daughter, yes, sir.

Q. Are you related in any way to Mr. George H. Kester?

A. No, sir, not any more—well, you know how my son is related to him, by marrying his wife's sister; so I don't consider that I am any relation to Mr. Kester.

Q. Do you remember taking up a claim under the timber and stone act in the spring of 1904?

Mr. TANNAHILL.—The defendants severally object to the introduction of any evidence relative to the taking up of the claim of the witness, in so far as it relates to bills and actions No. 388 and 407, upon the ground and for the reason that the entry of the witness is not involved in these particular actions.

The SPECIAL EXAMINER.—You may answer the question. [660—330]

The question was thereupon read by the reporter.

A. I remember of taking up a claim about seven years ago, I guess, now. I don't know whether it was in 1904 or 1905, and I don't know whether it was,—I didn't take it up in the spring; I think I took it up in the fall, at least that is when I made my trip into the mountains.

Q. Did you discuss with anyone the feasibility of taking up a claim?

A. No, sir, I never discussed it with anyone. I had in mind to take up one, as all my neighbors and friends were doing up there, and that was how I come



(Testimony of Mrs. Elizabeth White.)

to talk of taking up a timber claim.

Q. Who located you on a timber claim?

A. Well, I guess Mr. Dwyer did. There was several men in the mountains when I went there, and Mr. Dwyer was one of them, and I wasn't acquainted with any of the men at that time; I know Mr. Dwyer was with the other men. There was several; I don't know just how many.

Q. Did you go with a party?      A. I did.

Q. Who composed the party?

A. My son and his wife, and Mr. Kester and his wife, and several others,—I believe Mrs. Kettenbach and Mrs. Hallett.

Q. What Mrs. Kettenbach?    Mrs. Elizabeth Kettenbach?

A. Mrs. Elizabeth Kettenbach, yes. The reason I went with the party was simply because I was acquainted with them. I had in mind to take up a claim, and when I heard of those parties going in I thought now was my time to go, simply to have company; I was alone; I didn't have anybody to go with me.

Q. Did you make any arrangements to be located before you left Lewiston?

A. No, I did not, because when I left I didn't know whether I could get a claim or not. I just simply went because my son was going.

Q. Did you bargain with anyone to locate you?

A. Not at the time, not before I was located, I didn't.

Q. Did you afterwards?    [661—331]

(Testimony of Mrs. Elizabeth White.)

A. Bargain with anyone to locate me?

Q. Yes.

A. Well, I asked the locator if he couldn't get me a claim, after I got up there, and he said he thought he could, that there was plenty of claims there that hadn't been filed on, and he thought he would be able to get me a claim.

Q. Was this talk with Mr. Dwyer?

A. Well, I couldn't say whether it was Mr. Dwyer or the other men. It has been so long ago that, as I say, I knew Mr. Dwyer was there, because I have seen him off and on since.

Q. Did you pay this man that located you a locating fee?     A. I did.

Q. How much?

A. Well, I either paid him \$100.00 or \$200.00; whatever his locating fee was I paid him.

Q. You went into the timber in October, 1903, did you?

A. Well, I don't know whether it was 1903 or 1904, but I went in in October,—I don't know whether in October, but I went in about seven years ago, I believe it will be pretty soon. But I didn't make a minute of the date when I left here; I didn't think it was necessary.

Q. And then you, of course, returned to Lewiston and do you remember how long it was after you went to view the timber that you located?

A. After I went to view the timber?

Q. That you filed.

A. Well, I went up to see the timber, and then I

(Testimony of Mrs. Elizabeth White.)

filed some months later; I couldn't say as to that.

Q. Do you know the reason you didn't file immediately upon your return to Lewiston?

A. No, I do not.

Q. Were you told why you were not to file?

A. I really don't know that either, because I didn't know the rules, and I just went up thinking I could get a timber claim, and when [662—332] I came down I didn't know we had to rush in and file, and I just waited until the time came for me to file.

Q. It didn't occur to you that someone might file on the claim you had located on in the meantime?

A. No. As I say, I wasn't familiar with the rulings of the land office, and I really didn't give it very much thought. I thought if I got my claim it was all right, and if I didn't it would be all right.

Q. Did you pay this locating fee before you filed, or afterwards?

A. The locating fee before I filed or after? No, I didn't pay it before I filed; I wouldn't. I am pretty sure I didn't. I paid it when the time came to pay it.

Q. Do you know who notified you of the date you should file? A. Who notified me?

Q. Yes.

A. Well, my son was around in town. We were living,—well, I guess we were living in town across the Clearwater River, and my son came in and told me that we could file, and when I got over there everything seemed to be crowded with people, and I supposed they were all doing as I was,—going to



(Testimony of Mrs. Elizabeth White.)

file,—and that was all there was about it.

Q. Do you remember the day you went to the land office?     A. No, sir, I do not.

Q. I mean, do you remember the occasion?

A. The occasion?

Q. Do you remember being there?

A. I went in, and, as I said, there was quite a number of people in the land office, and then I think it was several days before we could file. I don't know what was,—I don't know just how it was, but I think it was two or three days we had to go over there. That was it. We held our place, I think, in the land office with others.

Q. Did you employ someone to hold a place for you?     A. No, sir, I did not.

Q. Do you know that anyone else did? [663—333]

A. I don't know about that; I wasn't acquainted with them.

Q. What time did you go to the land office the day you filed, what time of day?

A. What time of day?

Q. Yes.

A. Let's see: I think it was in the evening, I think.

Q. And did you have to wait any considerable length of time?     A. Before I filed?

Q. Before you filed.

A. I think I had to wait several days. I am not positive, but—

Q. But you didn't wait at the land office that long, did you?

(Testimony of Mrs. Elizabeth White.)

A. No, I came home and got my meals and went back again.

Q. You didn't remain there at night any time, did you?      A. At night?

Q. Yes.

A. No, I don't think I did. I am pretty sure. I didn't stay all night, anyway.

Q. Now, I understood you to say there was a crowd at the land office. Did you notice whether they were formed into a line, one after the other?

A. In a line?

Q. Yes.

A. Why, I don't know. I believe they were in line, I think, the morning I proved up.

Q. No, I am talking about when you filed, not when you made your proof.

A. Oh yes, when I filed. I really—I really couldn't tell you. I know there was a crowd in there, and some were standing and some were sitting.

Q. Well, did you form into line, become a part of the line?

A. Maybe I did now. I guess I did the last day, I think, but we were there,—as I said, there was some sitting and some standing, and I suppose I got just as near the door as I could, or the window, [664—334] or whatever it was (laughing), or wherever we had to be; I just went with the crowd.

Q. When you went there did you take a position at the end of the line, or did you get up in the middle of the line somewhere?

A. Oh, I just crowded in, got up as near as I could.

(Testimony of Mrs. Elizabeth White.)

Q. Was that the first day you went, or the last day?

A. Oh, I don't know. There was two or three days there that the people were coming and going, and I was there like the rest of them.

Q. Did you go alone, or did your son and daughter-in-law go with you?

A. Sometimes I went alone, and probably they came later, or maybe they were there when I got there.

Q. Do you remember who prepared your filing papers for you?

A. I don't know, but it might have been my lawyer; I had a lawyer to do business for me.

Q. Who was your lawyer at that time?

A. Well, I. N. Smith was my lawyer at that time. I couldn't say that he did that, but he was doing work for me at that time, and has since and before.

Q. I show you, Mrs. White, the timber and stone land sworn statement of Mrs. Elizabeth White, dated April 25, 1904, and ask you whether you signed that in duplicate, and filed it in the land office the date it bears.

A. Well, I guess I did. That is my signature. It looks like it. Of course I filed on my homestead.

Q. Is that your signature to the nonmineral affidavit, dated April 25, 1904?

A. Yes, sir, that is my signature.

Q. I show you the testimony of Elizabeth White, given on final proof, July 14, 1904, and ask you if that is your signature?



(Testimony of Mrs. Elizabeth White.)

A. I suppose it is. I haven't got my glasses. I suppose it is my signature. [665—335]

Q. Is that your signature to the cross-examination taken at the same time?

A. Yes, sir, it looks like it.

Q. The first paper I showed you, the sworn statement, have you any recollection as to where you received that paper? A. Where I received it?

Q. Yes.

A. Well, I don't know what the paper is. I just saw my signature there.

Q. It is the first paper you filed in the land office when you went there to initiate your entry.

A. Well, I don't know. I haven't any idea. I suppose if I signed any papers at all it was in the land office.

Q. Do you remember whether someone was attending to that part of the business for you?

A. No, I don't think so. As I say, I always had help with tending to my business. Any little thing I didn't know I would inquire. Sometimes I went to my lawyer.

Q. You knew Mr. George H. Kester, did you?

A. Oh, yes, I have known him always.

Q. Do you remember whether he tended to that matter for you?

A. Well, I don't remember. I really don't know about George Kester. Of course, he never did very much business for me, very many things, although anything I would ask him to do he would generally do.

(Testimony of Mrs. Elizabeth White.)

Q. Do you remember whether or not he had that paper prepared for you?

A. I don't know what that paper is. I see my signature, but I can't read the balance of it. I haven't my glasses with me.

Q. It is the first paper you filed in the land office.

A. Well, I know, but it has been so long ago that it is almost a dream to me now.

Q. You wouldn't say he didn't prepare it for you, would you? [666—336]

A. I wouldn't say he didn't or that he did; I really don't know.

Q. Do you remember whether or not you talked with Mr. William F. Kettenbach about it?

A. I did, yes; I told him I was going, and I told him my son was going. I was living at their house at the time, and I said "I am going up tomorrow with a party that is going to take up timber claims." And he says, "I wouldn't advise you to go, the trip is too rough for you." And I said, "Well, others went, and I guess I can stand what others can," and so I went.

Q. Do you remember what expenses or fees you paid at the land office the day you made your entry?

A. The day I made my entry?

Q. Yes.

A. I don't remember the amount, but I paid whatever it was.

Q. Have you any idea what the amount was?

A. I haven't any idea at all what it was, but I know whatever it was I paid it with my own money. I

(Testimony of Mrs. Elizabeth White.)

generally had a little money by all the time that I could use when I needed it.

Q. Do you remember whether you gave them the names of the witnesses that would be used at final proof?     A. That I did?

Q. Yes.

A. Well, if I did, I suppose you have it there.

Q. I say do you remember of giving them the names?

A. I guess I did. I suppose the parties that was with me.

Q. Do you remember being in Mr. I. N. Smith's office the day that you filed?

A. No, I don't think I was there the day I filed. I really don't know. I went to his office so often that I wouldn't be positive as to that.

Q. Did you know a Mr. Edwin Bliss?

A. I met a Mr. Edwin Bliss, yes, in the mountains.

[667—337]

Q. Did you know Mr. Lee Stansbury?

A. I don't remember. I may have met him there; there were several parties up there.

Q. Do you remember the occasion, Mrs. White, of making your final proof?

Mr. TANNAHILL.—We object to any evidence in relation to the final proof, as irrelevant and immaterial.

Mr. GORDON.—Please answer the question.

The EXAMINER.—Answer the question.

A. Do I remember making it?

Mr. GORDON.—Yes.



(Testimony of Mrs. Elizabeth White.)

A. Yes, I made final proof.

Q. Do you remember who went to the land office with you, if anyone?

A. I think I went alone. I mean, there was others in company with me, but nobody took me there.

Q. Do you remember how much money you paid in the land office when you made your proof?

A. Well, whatever it was. I thought it was over \$500.00.

Q. How much?

A. I really don't know. I paid them whatever it was, I know (laughing).

Q. Have you any idea how much it was?

A. (Laughing.) Well, I know it was \$400.00 or \$500.00,—\$500.00 and some cents, twenty cents, or nineteen cents, or eighteen cents.

Q. Do you remember whether you paid that by check or in cash?

A. Let me see. I think I had the cash; I am not sure.

Q. Well, do you remember whether you drew it from the bank or not that day? A. What?

Q. Whether you drew that amount of money from your bank that day or not? [668—338]

A. Well, I guess I did, because I didn't carry that amount around with me very long.

Q. Where did you bank?

A. I banked at the Lewiston National, always banked there, or have been banking there for fifteen or sixteen years.

Q. Did you borrow that money from anyone?

(Testimony of Mrs. Elizabeth White.)

A. No, sir, I did not.

Q. Have you still got that timber claim, Mrs. White?     A. I have.

Q. Have you ever tried to sell it?

A. No, sir, I have not.

Q. Never offered it for sale?

A. No, never offered it for sale, though I would like to sell it if I could.

Q. Have you ever given it into the hands of anyone to sell for you?     A. No, sir, I haven't.

Q. You never authorized anyone to sell it for you?

A. Never authorized anyone to sell it.

Q. Have you more than the one timber claim?

A. Yes, sir.

Q. You purchased them?

A. Purchased them and paid for them.

Q. Whose claims did you purchase?

A. Well, I purchased my son's claim and his wife's. They wanted to sell it and I bought it, and their homestead, and several other claims.

Q. How is that?

A. And several other claims, I say, and—

Q. Will you tell me the names of the entrymen you bought from? Will you tell me the names of the other entrymen whose claims you bought? [669—

339]     A. I don't know what you call an entryman.

Q. A person who did the same as you did, went and took up a claim.

A. You mean just bought it of him when he had a deed to it, or before he had a deed to it, or what?

Q. Name them.

(Testimony of Mrs. Elizabeth White.)

A. Well, I bought my son's claim and his wife's.

Q. And what others?

A. And a claim he had out on Brown's Creek, if you know where that is.

Q. What other claims?

A. I think that is all I have. I have some other timber claims on the Lolo, but I haven't any,—are those the ones you have reference to, those parties?

Q. Yes.

A. I have several timber claims,—I have some over on—

Q. Now, who did you purchase that from?

A. Well, I think it was Robnett. I really couldn't say, but he borrowed money of me, and I couldn't tell you about those claims because I don't know enough about them. I really never thought very much about it. I had to take them, didn't want them, but—

Q. What did you pay for your son's claim?

A. Well, I paid him \$4,000.00 apiece for his claims.

Q. Did you pay him in cash?

A. Well, I guess it was cash. He was owing me a little money and I consider that cash.

Q. You took it in payment of some money he owed you?

A. Oh, just a little he owed me, and then he wanted to sell his claims. He wanted to go in business, and his wife wanted to sell her's, and he wanted to get as much as he could for them, and he couldn't, and I really paid him a bigger price than he could get of anybody else; I simply did it because he was my son.

Q. Do you know how much actual money you paid



(Testimony of Mrs. Elizabeth White.)

for those two claims? [670—340]

A. What two claims?

Q. Your son's claim and his wife's claim.

A. I gave her \$4,000.00 for her timber claim, and I gave \$4,000.00 for his.

Q. That makes \$8,000.00?

A. That makes \$8,000.00.

Q. Now, did you give him a check for \$8,000.00, or how much did you pay him?

A. Well, I couldn't tell you. I gave—I paid Mrs. White for her money, and I paid him for his money. Now, I have got that much money in those claims,—\$12,000.00,—for his homestead.

Q. When did you purchase Mrs. White's claim?

A. I purchased it,—well, I think it was,—no, not last January,—a year ago, I think.

Q. In January a year ago?

A. I think that was it. I have a deed to it, yes. I own those claims; those are my claims.

Q. I know, but—

A. I own them just as much as I own anything I have, and I have a deed to it, and I have it recorded. I didn't come up and look at the recording, whether it was done or not, but I was going away at the time,—I went down to California to be gone several months, three or four months,—and I fixed this up before I went away, and I left it with my son and Mr. Kettenbach; he tended to my business ever since my husband died.

Q. Which Mr. Kettenbach? Your son-in-law?

A. My son-in-law. He has always helped me and

(Testimony of Mrs. Elizabeth White.)

was willing to assist me in anything I didn't understand; and I left it with my son to fix it up when I went away. So they are my claims, and I am going to keep them if you don't take them away from me, you or the fire. I don't know which is the worst.

Mr. GORDON,—Well, I hope I am not as bad as the fire. [671—341]

WITNESS.—Well, I don't know. The fire doesn't know any better.

Q. Now, did you pay for this claim of your daughter-in-law in cash?

A. Well, if I would give her my note, would that be cash?

Q. I guess so.

A. I have always found my note was as good.

Q. Did you give her your note?

A. I gave her my note, and I paid her the money as she needed it.

Q. When did you give her the note?

A. When I bought the claim.

Q. You gave her a note for \$4,000.00?

A. Well, maybe I did or maybe I didn't, but that is what I paid her for the claim.

Q. Well, now, will you tell me whether you gave her a note for \$4,000.00?

A. Well, I might have given it to her for \$4,000.00. Maybe I gave her some cash and maybe I gave her the balance, and when she needed this money I gave it to her. My checks will show it.

Q. Where is that note now?

A. What note? That I gave her?



(Testimony of Mrs. Elizabeth White.)

Q. Yes.

A. Well, when I bought it I had to borrow a little money, and I have been paying it off ever since.

Q. Where did you borrow the money?

A. The bank I did my business with.

Q. How much did you borrow?

A. I don't know. I borrowed about \$3,000.00 or \$4,000.00. I really don't know, Mr. Gordon (laughing), but as I said, I paid them \$4,000.00 apiece for their claims.

Q. Did you go to the bank to borrow that money, or did you talk it over at home with Mr. Kettenbach?

A. No, I didn't have anything to say to Mr. Kettenbach. I was [672—342] talking with my son, because he was anxious to sell his claims, and he went out on the outside to different parties and he couldn't get what he felt they were worth, and he came to me and says, "My claims are worth this much, and I ought to have it, but I can't get it," or something, and I said, "Now I will tell you: I will give you \$4,000.00 for your claims, \$4,000.00 apiece, if that will satisfy you," and he said it would. I was afraid he would sell it to somebody else and he wouldn't do as well, and I thought I could hold them and get what I could out of them.

Q. Did you give him a note for his claim too?

A. I paid him the money, and he was owing me a little money at the time; he had borrowed a little money of the estate, and he wanted to pay that off, and he said he felt that he couldn't hold his timber claims any longer, so that is the way it stands. But I have those claims, Mr. Gordon. They are just as



(Testimony of Mrs. Elizabeth White.)

much mine as if I owned anything at all. I own those claims and you want to pin me down to every dollar, where I got it, and how I substituted and—

Q. No, I just want to know how the transaction was conducted.

A. Well, it was transacted right on the square, Mr. Gordon (laughing). I am really not a business man, and, as I said, when my husband died I was perfectly helpless and dependent, and I had to rely on Mr. Kettenbach; he was the only man we had in the family, and he always looked after my business and helped me out, and he always did what was right with me, and I had no fault to find with him.

The SPECIAL EXAMINER.—What Mr. Gordon wants, Mrs. White, is to know how you paid for those two claims, whether you paid in money, and how much.

A. Yes, it was all money.

Mr. GORDON.—Q. Now, you say you borrowed between \$3,000.00 and \$4,000.00, as I understood you, from the Lewiston National Bank?

A. Yes, sir. [673—343]

Q. Did you give a note for that?

A. Yes, sir.

Q. When was that?

A. That was when I bought those claims.

Q. Have you paid that note yet?

A. I have paid it all but \$1,000.00.

Q. You have paid all but \$1,000.00?

A. Yes, sir.

Q. Where is that note now?

(Testimony of Mrs. Elizabeth White.)

A. That note is down in the Lewiston National Bank.

Q. How many timber claims have you altogether?

A. Altogether?

Q. Yes. A. I don't know (laughing).

Q. Well, have you four or a dozen?

A. I have my own, and three, four,—I have four, and then I have some over on the Lolo; I don't know how many I have there.

Q. Who did you purchase the others from, besides those that you have mentioned?

A. Well, now, you ask me who I purchased them of. Mr. Kettenbach would loan money at times—

Q. What is that?

A. They came from Clarence Robnett. He had borrowed money of me, and those claims came from him. I don't know much about those claims.

Q. Did you conduct your business with Mr. Robnett, or through somebody else?

A. I said Mr. Kettenbach always helped me out in my business, and he had loaned, I supposed,—I didn't think much about it,—I suppose he loaned the money. I don't know how much it was. I think I have the notes down in the bank, but I am not sure, the old notes that I paid off.

Q. How many claims were there of that kind?

A. I don't know how many claims there were.

[674—344]

Q. Were there two?

A. I don't know how many claims there were over there. There are probably,—I know I pay taxes on

(Testimony of Mrs. Elizabeth White.)

them, and I don't know how many claims there are.

Q. Do you still pay taxes on them?

A. Yes, sir, I do.

Q. Do you know how much the taxes are a year on all the timber claims you have?

A. I don't know (laughing). I know it amounts to a good deal.

Q. How much?

WITNESS.—Mr. Dwyer, you ought to know what taxes you pay on timber claims. I know my taxes amount to a good deal in the year.

Mr. GORDON.—Q. Is it \$1,000.00 a year that you pay in taxes on your timber claims?

A. I have got the tax receipts, but I think at one time it was \$40.00 a claim. I don't know,—I won't say, but I know I pay taxes on them.

Q. How many claims do you pay taxes on?

A. I just got through telling you that I didn't know.

Q. You don't know?

A. I know those claims that I bought, my son's claim and his wife's—

Q. I am not speaking of the three claims, the one you located on and your son and daughter-in-law, I am not talking about them now. I am talking about the others.

A. I don't know how many claims there are there; there are several, but I don't know the number.

Q. Is the title to those other claims in your own name?

A. Yes, sir. I never saw the deed, but I never saw



(Testimony of Mrs. Elizabeth White.)

the deed to any of my claims, but I know they are assessed to me and I pay the taxes on them.  
[675—345]

Q. Do you pay these taxes yourself, or does somebody else tend to that business for you?

A. Well, my son paid them last January.

Q. Haven't you any idea how much the amount was?

A. No, I wouldn't say. It was a good deal, I know. It was as much as I wanted to pay.

Q. What do you call a good deal?

A. Oh, dear me, I don't know, Mr. Gordon (laughing); I wouldn't swear to anything I don't know.

Q. Well, was it \$300.00 or \$400.00?

A. I suppose I could get the amount by going down to the recorder's office,—to the assessor's office.

Q. Now, how much did you pay for these other claims that you have, besides the three we have eliminated for the time being?

A. Well, I have had these claims some time, you know.

Q. When did you get them?

A. I don't know the year, but I had them before I got the others.

Q. You had them before you got the others?

A. Yes. I don't know how many thousand dollars I have in them.

Q. How long before you got the others did you get them? A. I don't know how long.

Q. Was your husband living at that time?

A. Oh, no.

(Testimony of Mrs. Elizabeth White.)

Q. Did you ever mortgage those other claims or borrow any money on them?

A. I never borrowed any money on them that I know of, or ever mortgaged them.

Q. Have you any idea of the value of those claims?

A. The value of them?

Q. Yes.

A. Not only the way timber is selling, and other people, what they get for their claims.

Q. Have you ever tried to sell any of those other claims? [676—346]

A. No, I have never tried to sell them.

Q. Have you ever given them to anybody else to sell for you?

A. What claims? You mean the Lolo claims?

Q. The ones you referred to as getting from Mr. Robnett.

A. I don't know that I ever did. I think there was some parties called my son up once or twice and wanted to know if they were for sale. Now, I don't know whether,—I don't know about that. I remember my son coming home and telling me that this man, some man, wanted to buy the claims, or something.

Q. Did you ever ask Mr. Will Kettenbach to sell those claims for you?

A. No, I never did ask him to sell those claims for me.

Q. Nor Mr. George Kester?

A. Nor Mr. George Kester.

Q. Did you ever give them the authority to sell them?

A. No, sir, I never gave them any authority.

(Testimony of Mrs. Elizabeth White.)

Q. Now, can you give us some idea as to what those claims cost you?

A. Well, I think I answered that question. I don't know what claims you have reference to.

Q. The ones you got through Robnett, the ones you referred to as the Robnett claims, that Robnett was connected with.

A. I don't know whether they cost \$5,000.00 or \$7,000.00 or \$10,000.00.

Q. Do you know whether they cost \$1,000.00 or \$2,000.00 or \$3,000.00?

A. I think they cost more than that, I am pretty sure. It seems to me I know they cost,—I really couldn't say, but it was \$5,000.00 or \$7,000.00 or \$8,000.00 or \$10,000.00. I don't know.

Q. State how you happened to buy those claims.

A. I couldn't say, because, as I say, he borrowed the money.

Q. Who borrowed the money?

A. Well, Robnett, because my notes show he borrowed the money. [677—347]

Q. From whom?

A. I suppose he did from Mr. Kettenbach. Mr. Kettenbach always made loans for me when I had the money; he always looked out and made loans whenever he would see a good one.

Q. Is the Mr. Robnett you refer to Mr. Clarence W. Robnett that used to be down at the bank?

A. Yes.

Q. And this money was loaned Robnett of yours through Mr. Kettenbach, as I understand it?



(Testimony of Mrs. Elizabeth White.)

A. Yes. I had money there and I suppose he loaned it to Mr. Robnett.

Q. Have you those notes of Mr. Robnett's?

A. Well, I guess they must be around somewhere in the bank among other papers,—I don't know. I really forgot about it.

Q. Now, how long did this transaction take place before you entered on your timber claim?

A. I don't know.

Q. Did you take these claims in settlement of this money that was loaned of yours?

A. Did I take these Robnett claims?

Q. Yes.

A. I suppose I did. I have the claims and he borrowed the money and he turned the claims over; I guess that was the way.

Q. And did that square Mr. Robnett with you?

A. I don't know whether that particular transaction squared us or not (laughing).

Q. Well, you didn't tend to any of the business with reference to those claims yourself, did you?

A. No, not those, I didn't.

Q. It was all attended to for you by Mr. Will. Kettenbach?

A. Yes, it was all attended to, I suppose it was, because I gave him authority to do those things.

Q. Were the deeds ever delivered to you?  
[678—348]

A. I suppose they were delivered to me. I know they are my claims. I never read over the deeds. I really haven't read over the deeds to any of my

(Testimony of Mrs. Elizabeth White.)

property that I know of.

Q. Did you record those deeds? Do you remember of ever seeing the deeds?

A. Well, I have never seen the deeds to any of my property, any property that I have.

Q. Who does see the deeds to the property that you own, and have acquired?

A. Well, I haven't made any inquiry into it at all, but I know they are my claims, and I was paying taxes on them, and that is all that I thought of.

Q. Have you ever sold a timber claim that was in your name?

A. Have I ever sold a timber claim that was in my name?

Q. Yes. A. Any particular timber claim?

Q. Any one.

A. Well, I don't know. I might have had a timber claim and it was sold and I wouldn't say that I didn't.

Q. Have you ever sold any property since your husband died? A. Any property? Yes.

Q. Any timber claims?

A. Not that I know of. I may have, too.

Q. Did you ever sell any property to the Clearwater Timber Company?

A. Well, that,—I guess that was,—let me see,—this timber,—I didn't sell it myself, I don't think. I know I didn't sell it myself, my name,— I guess was a third party, wasn't it, and I don't know anything about that.

Q. Who tended to that for you?

(Testimony of Mrs. Elizabeth White.)

A. I don't know. I don't know anything about that piece of property at all.

Q. Did you ever sell any other piece of property since your [679—349] husband's death?

A. Yes, I have sold a good deal.

Q. Any timber claims?

A. No (laughing), not that I know of, Mr. Gordon.

Q. Now, Mrs. White, you don't know very much about these timber claims, do you?

A. Well, what I do know I know, and other things I don't know very much about.

Q. What is there about these timber claims that you know to a certainty?

Mr. TANNAHILL.—We object to that.

WITNESS.—What timber claims?

Mr. GORDON.—Any of them.

WITNESS.—I know I took up a timber claim, and I paid for it, and I have it and am paying taxes on it. And I bought my son's claim and his wife's claim, and his homestead, and another claim, and I am paying taxes on that, and I am paying the Clearwater Fire Association to take care of it for me; I know I have them and pay taxes on them.

Q. Have you any idea how many others you have?

A. No, sir; I don't think I have (laughing).

Q. No idea? A. Outside of those, I don't know.

Q. Do you know how much money you invested in those other timber claims?

A. No, sir; as I said.

Q. Well, who did the investing for you in those other timber claims?



(Testimony of Mrs. Elizabeth White.)

A. Well, I guess it was taken on a debt, these timber claims were turned over.

Q. Mrs. White, you didn't have to give a note then to purchase these claims, did you?

A. You say I didn't have to give a note?

Q. I asked you if you did have to give a note.  
[680—350]

A. If I purchased the claims and gave them my note?

Q. No, I don't mean the three claims you have referred to. I mean the others.

A. No. I told you this man had borrowed money of me at certain different times, I think, and these claims were given in payment for this loan.

Q. Do you know how much cash money you had that you were lending that way?

A. No, I don't know the amount of cash.

Q. Did you keep all the cash you had approximately at the Lewiston National Bank?

A. Yes, sir; that is where I did business.

Q. You don't know how much cash was expended in them?

A. I don't know. That has been a long time ago, and I really never gave business very much thought, while I try to do what is right.

Q. Now, you said something about a third party in the Clearwater Timber Company claim. Do you know who that third party was?

A. What have you reference to?

Q. I say are you the third party in what you call the Clearwater Timber Company transaction?

(Testimony of Mrs. Elizabeth White.)

A. Oh, I don't know anything about that, Mr. Gordon. I know there was a claim—

Q. Was that the claim?

A. From what I saw in the paper you served on me, that claim, and I don't know much about it.

Q. Was that claim put in your name as a third party? A. I don't really know that.

Q. Mrs. White, did you buy Mrs. Hallett's claim?

A. No, sir; I did not; not that I know of. I never heard of it; I don't know anything about her claim.

Q. When your son purchased his claim, did he get his money from you to purchase it? [681—351]

A. No, sir.

Q. The money he owed you was for other transactions? A. Oh, for other things, yes.

Mr. GORDON.—We offer in evidence the timber and stone land sworn statement of Elizabeth White, dated April 25, 1904, the nonmineral affidavit of Elizabeth White of the same date, the notice of publication of the same date, the testimony of Elizabeth White given on final proof, and the cross-examination of Elizabeth White at final proof, all of which papers have been identified by the witness, the testimony of the witnesses given at final proof, and the cross-examination of said witnesses, the receiver's receipt and the register's certificate, dated July 14, 1904, certified copy of patent issued to Elizabeth White, dated December 31, 1904, all relating to the entry of the south half of the northwest quarter and the south half of the northeast quarter of section 23, township 38 north of range 5 east, Boise meridian.



(Testimony of Mrs. Elizabeth White.)

Said above mentioned documents were thereupon marked by the reporter as Exhibits 17, 17A, 17B, 17C, 17D, 17E, 17F, 17G, 17H, 17I, 17J, 17K, 17L, and 17M.

Mr. TANNAHILL.—The defendants severally waive any further identification of the papers, but object to the introduction of any of the papers in evidence in support of bill and action No. 388 and 407, upon the ground that they are irrelevant and immaterial, the entry not being involved in these two particular actions. And the defendants severally object to the introduction of all of the final proof papers in evidence in support of any of the actions, and especially the testimony of the claimant Elizabeth White, the cross-examination of the claimant Elizabeth White, the testimony of the witness Edwin Bliss, and the cross-examination of the witness Edwin Bliss, the testimony of the witness William Dwyer, and the cross-examination of the witness William Dwyer, upon the ground that it relates to matters occurring at the final proof, long after the filing of the sworn statement, and is irrelevant and immaterial. [682—352]

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mrs. White, I believe you said you still held your timber claim?     A. Yes, sir.

Q. You have never made any contract or agreement with anyone for the sale of it?     A. No, sir.

Q. Before you made your final proof?     A. No.

Q. Then, your affidavit that you made when you



(Testimony of Mrs. Elizabeth White.)

filed your sworn statement, "That I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself," that affidavit was true, was it?

A. That affidavit was true.

Q. And it was true at the time you made your final proof?

A. Yes, it was at the time I made my final proof.

Q. And it is still true?      A. And it is still true.

Q. And you had no contract or agreement with your son William J. White or his wife Mamie P. White that you would purchase their land, before they made final proof, did you?

A. No, sir, not until a few days before I did purchase it.

Q. And you had no contract or agreement with Mr. Robnett?      A. No, sir.

Q. Or with any of the entrymen, in so far as you know the entrymen that you did purchase the timber claims designated by you as on the Lolo, prior to the time final proof was made? [683—353]

A. No, sir, I did not.

Q. And you paid your own money for the claims you purchased from your son and his wife?

(Testimony of Mrs. Elizabeth White.)

A. I paid my own money.

Q. And it was your own money that was paid for the claims you say are located on the Lolo?

A. Yes, sir, it was my own money.

Q. And you still have the claims?

A. I still have them.

Redirect Examination.

(By Mr. GORDON.)

Q. You say you didn't purchase any until final proof was made. Have you any recollection of whether you did purchase them at final proof, or when you did purchase them? A. Any of them?

Q. Those on what you call the Lolo.

A. No, I have not.

Q. You don't know anything about it, do you?

A. No. I don't know who took them up. I don't really know the entrymen, only I know I loaned the money.

Mr. GORDON.—That is all.

Recross-examination.

(By Mr. TANNAHILL.)

Q. Mrs. White, Mr. Gordon asked you concerning the claim of Mrs. Hallett. A. Yes.

Q. You never had any agreement with Mrs. Hallett to purchase her claim, did you?

A. No, sir, I don't know anything about her claim.

[684—354]

**[Testimony of Van V. Robertson, for Complainant.]**

VAN V. ROBERTSON, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Mr. Van V. Robertson?

A. Yes, sir.

Q. Where do you reside, Mr. Robertson?

A. I reside in Moscow at present.

Q. How long have you resided at Moscow?

A. About two months and a half.

Q. Well, where did you reside in February, 1903?

A. Lewiston.

Q. And how long had you lived at Lewiston then?

A. I think about 18 months.

Q. And what was your occupation?

A. I was in the cigar-store part of the time, and part of the time in the saloon business.

Q. Whose cigar-store were you in?

A. In the Thiessen building—Miller & Robertson at the time I was in there.

Q. You were employed by them, were you?

A. No—I had a half interest in the store.

Q. Then how long were you in the business?

A. Oh, I don't remember—three or four months; something like that.

Q. And how long were you in the saloon business here?

A. Possibly eight months—eight or ten—less than a year.



(Testimony of Van V. Robertson.)

Q. Do you know any of the defendants, Kettenbach, Dwyer, or Kester?     A. I know Mr. Kester.

Q. Do you know Mr. Dwyer?

A. I know him by sight.     [685—355]

Q. Do you know Mr. Robnett?     A. Yes, sir.

Q. Did you ever do any business with either of them?

A. Yes; I done a banking business there while I was in this town at the time I was in business.

Q. Had you done any banking business with them before you entered the timber claim?

A. How is that?

Q. Had you done any banking business with them before you entered the timber claim?     A. Yes, sir.

Q. Now, will you state how you happened to take up a timber claim.

Mr. TANNAHILL.—We object to any evidence relative to the witness' timber claim, in so far as it relates to bill No. 388 and 407, on the ground that the entry of the witness is not involved in these two particular actions, and it is irrelevant and immaterial.

The SPECIAL EXAMINER.—Now, Mr. Robertson, you should speak out pretty good and loud, so we can hear just what you say, and so the Stenographer can get the answer down. Now, read the question, please, Mr. Stenographer, and answer in a good loud voice so that we can hear you.

The Stenographer thereupon repeated the last question.

(Testimony of Van V. Robertson.)

Mr. GORDON.—Answer that, please, Mr. Robertson.

A. Why, I suppose I took it up like anyone else would take up a timber claim, or the same as any man would—to make money out of it, of course.

Q. Now, who did you discuss taking up a timber claim with?

A. Well, I think the first man that—oh, I have talked the timber claim business many times; but while in the cigar-store business I found out through my partner (Mr. Miller) that there was a party going out; and I think that is the first time that I discussed this particular [686—356] business, that I have any recollection of.

Q. Well, then, what happened after that?

A. Well, I got acquainted with Mr. Knight, and made arrangements to be located.

Q. Who introduced you to Mr. Knight?

A. Well, I don't remember.

Q. Mr. Robnett? A. No.

Q. Which Mr. Knight is this?

A. Well, sir, I don't know what his given name was. He was a locator—represented as a locator to me. I never met him until a few days before we went on this trip. I think they called him Ed. It seems to me like that is what they called him; I wouldn't be positive, though.

Q. Now, did Mr. Knight tell you what you could do with this timber claim?

A. No, I don't know that he did. It seemed to be understood that if a man got a deed to timber claims



(Testimony of Van V. Robertson.)

that they was going to come in and he would have a chance to sell them in a short time. It seems they were going up in this Coeur d'Alene country pretty good, and they said different ones in common conversation. It was talked over.

Q. Did Mr. Knight tell you that there was a syndicate that was ready to buy this land?

A. I don't think so.

Q. Did Mr. Miller tell you that?

A. I don't know as he did. But it was generally understood that there would be buyers here the same as there had been other places. I don't know who told me that, or anything of the kind; but it seemed to be the common talk around here, that it was a good proposition to get a hold of some timber lands, the same as it would be to go into any other land proposition.

Q. Well, did either of those gentlemen tell you that a syndicate [687—357] was ready to buy this land as soon as it was taken up?

A. I don't think so.

Q. And when they could get a big bunch of it together, and that you could make something out of it?

A. Well, later—I don't know as that would be an answer to the question—but later I know that there was talk—that Robnett told me that he would like to handle the land, and to go ahead and prove up on it, and I asked him in what way, and he said that he would handle it on a commission, the same as a real estate man; that they would have opportunities to sell them that anybody else wouldn't have, because



(Testimony of Van V. Robertson.)

they would have a body of it together, or try to have.

Q. Did you have at that time the money with which to purchase a timber claim?

A. I did when I filed on it.

Q. You did?      A. Yes, sir.

Q. Did you have it in bank?      A. Yes, sir.

Q. How much?

A. Oh, I don't remember how much I had. I know I had when I came there.

Q. How much did you have when you came there?

A. I transferred \$2,850.00 from the Camas Prairie Bank to the Lewiston National Bank.

Q. And when was that?

A. I came here sometime in December—late in December.

Q. That was the December before you entered in February?

A. When I moved I transferred this in January. I wouldn't be positive exactly about the dates.

Q. And how did you transfer it—in what form?

A. Why, to do my banking business here instead of doing it in Grangeville. I moved here. [688—358]

Q. Do you mean you drew a check and transferred it here?      A. Yes, sir.

Q. You didn't take a certificate of deposit?

A. I think I just drew a check.

Q. And opened up an account with the Lewiston National Bank?      A. Yes, sir.

Q. And that was the latter part of 1902 or the first of 1903?

(Testimony of Van V. Robertson.)

A. Well, yes, it might have been in January, because I came very late in the year. It was the latter part of December that I came here, and it might have been the first of the year that I transferred it; I am not positive.

Q. Now, had you ever met Mr. Robnett before you came here?      A. No, sir.

Q. And how long after you came here did you have this conversation with him that you have just related?

A. Oh, that was—I don't know that I ever met Mr. Robnett only possibly seeing him in the bank or something.

Q. Well, did he make that suggestion that you have just stated, or did you bring about the conversation yourself?

A. I think I brought it up myself, that I didn't think that I would prove up on the land; that my family was sick, and I was tied up in my business in such a way that I didn't know that I would have the money to do it with.

Q. And what did Robnett tell you?

A. Well, he said it would be too bad to throw it up; he said there was a chance to make some money out of it, and he believed the timber claims was a good proposition, and he said possibly he could make arrangements in the bank to furnish the money to prove up on the land—take a mortgage on the land.

Q. Was this conversation at the bank?

A. I don't know whether it was or not. I don't remember positively. [689—359]

(Testimony of Van V. Robertson.)

Q. What is your best recollection?

A. Well, I wouldn't like to say as to that, because it is something a man drops from his mind and never gives it another thought; and if I would tell you where it was I wouldn't be telling what was absolutely true, because I don't know. I don't remember as to that.

Q. You say you brought this matter up yourself?

A. I think so.

Q. Now, what was your purpose in telling Mr. Robnett this? Had he had anything to do with your claim prior to that time?

A. No, I don't think so. I think I had been talking to other parties about it—Miller—and Miller said he was going to get the money, and I think that is the way it came up. Of course, I don't remember exactly.

Q. What did Mr. Miller say? What did I understand you to say Mr. Miller said?

A. I think I might have been talking to Mr. Miller. We were in business together, and he told me he was going to get the money from the bank to prove up on his claim. Possibly that is the way I got the idea, but I am not positive how that part came up.

Q. Now, do you know whether or not, before filing, you talked with Mr. Robnett about taking up this claim? A. I have no recollection of it.

Q. And that Robnett told you that he had a large bunch of claims that he was going to sell, and that if you would take up one you could put it in, and that you would be satisfied with \$400.00 for your share of



(Testimony of Van V. Robertson.)

what you got out of your claim?

A. No, I never had no such conversation; no, sir.

Q. Now, who located you on that claim?

A. Knight.

Q. Did you pay him for locating you?

A. Yes, sir.

Q. How much? [690—360] A. \$100.00.

Q. And when did you pay that—before you went to file or afterwards?

A. Oh, I guess I paid him when I came back from the trip; if I remember right the same day that we got into town.

Q. And where did you go from here to view that claim? A. I went up the North Fork.

Q. Sir?

A. I went up on the train as far as Ahsahka, and then on the North Fork.

Q. And who went with you?

A. Well, I don't know all the parties. A man by the name of Nelson, and Miller, were two of the parties.

Q. Was the Miller the same Miller—

A. —that was in partnership with me in the cigar store; yes, sir.

Q. And did he tell you that he was going to get his money from the bank to make his proof?

A. He told me this afterwards. I don't think he told me that then.

Q. Miller is dead, isn't he? A. Yes, sir.

Q. And do you remember anyone else that went along?

(Testimony of Van V. Robertson.)

A. Well, there was two other men in the party, but I don't remember their names. It seems to me like Varney or some such a name was one man. I wouldn't be positive, though. It seems like that was the name, some such a name. Anyway, I would know the fellow if I would see him, but I wouldn't be positive about his name. The other party, I don't remember his name if I ever knew it. Either one of them I wasn't personally acquainted with them.

Q. Do you know how much timber was on this claim?

A. Well, all I know about it was the estimate I got.  
[691—361]

Q. How much was that?

A. Something like a million and a half, I think.

Q. And were you told how much it was worth per thousand?

A. Yes; I think they told me at the least calculation that a man ought to be able to get four bits or a dollar a thousand for it.

Q. And then, do you remember who prepared your filing papers and your sworn statement that you filed in the land office?

A. No, I don't remember.

Q. Did you pay a fee for that service?

A. Yes; I paid all the expenses.

Q. Well, I mean do you know whether any was charged for preparing that paper?

A. I don't think so. I think I paid just the filing fee was all.

Q. How much was the filing fee?

(Testimony of Van V. Robertson.)

A. I don't remember—something like \$8.00 or \$10.00—I don't remember—something like that.

Q. You are not related in any way to any of the defendants that I spoke to you about?

A. No, sir.

Q. Now, after you filed, do you remember whether you gave the people at the Land Office the names of the witnesses that you would have for final proof?

A. I wouldn't be positive who the witnesses was, but it seems like it was some party that was out with me. I believe it was. I wouldn't be positive, though.

Q. Now,—

A. I have never given it a thought since.

Q. Now, state the first conversation that you can remember of having with Mr. Robnett about this claim.

A. Well, I think the first conversation I had was in regard to proving up; that I didn't think I would prove up unless I could raise [692—362] the money elsewhere; that I wouldn't have the money to spare, I didn't think; that my family was sick, and that I was going to be cramped in my business, and that I didn't think I would go through with it unless I could borrow the money.

Q. And what did he say?

A. He said he might make arrangements, and he said he would hate to see me throw it up, because he thought it would be throwing away a good chance.

Q. Was it at that time that he said he would like to handle it for you?



(Testimony of Van V. Robertson.)

A. I wouldn't be positive about that?

Q. Well, now, what was that conversation, and as near as you can recollect when was it, with reference to the final proof?

A. Oh, I think that was after I proved up that he wanted to handle it; said that he would if they got a chance to sell. I told him that I didn't want to lose this property through a mortgage, and he said he thought there would be ample chances to sell; and he said they would have quite a little body of timber, and I asked him what he would charge me, and he said he would charge me a real estate man's commission—four or five per cent.

Q. And do you think that that was after you made proof that you had this arrangement with Robnett to sell? A. I think so.

Q. Well, didn't you sell to Kester and Kettenbach the very day that you made proof?

A. Well, not intentionally I didn't. I supposed I gave a mortgage. I know afterwards I made them a deed, and so if I had sold to them I wouldn't certainly have made that, would I?

Q. Excuse me—I was looking at a mortgage thinking it was a deed. Did you give a note the day that you got this money from Robnett?

A. Yes, sir. [693—363]

Q. How much did you get? A. \$400.00.

Q. And did he give it to you in cash?

A. Yes, sir.

Q. And where did you get it—at the bank?

A. Yes. No—I got it of Robnett. Well, I think

(Testimony of Van V. Robertson.)

I went into the bank, and I think he got the money and handed it to me and we made out the papers. I know I did the business through him—with him.

Q. Now, did you have any discussion with Mr. Robnett about where you should say you got that money when you went to the Land Office?

A. I don't think that I did.

Q. Did Mr. Robnett tell you that you would have to say that that was your own money, and that you had had it a certain length of time?

A. Well, I don't remember.

Q. Well, do you remember what you did say about it, when you went to the Land Office?

A. I think I claimed the money.

Q. And do you remember how long you said you had had that money in your actual possession?

A. No, I don't think so.

Q. Do you remember this question being asked you: "Question 17. Where did you get the money with which to pay for this land, and how long have you had the same in your actual possession?" "Answer. The money I made from my business. Two years." Do you remember that question being asked you and that answer being made by you?

A. Well, I don't remember every little thing that was said or done. Possibly that's right. If it is a matter of record it is probably right. But I presume that I had that much money in the bank at that time.

Q. But not of that particular money that you carried up there, did you?



(Testimony of Van V. Robertson.)

A. No, sir; I got that of Robnett. [694—364]

Q. Now, did you go on this land before you made your filing, or wasn't it just before final proof that you went up there to look at this land?

A. No; I went up there before I made my filing.

Q. And you went at the same time that Nelson went?

A. I went at the same time that Nelson went. That is, I wouldn't say positively that I was on the land, but I went up in that country. I don't know no more about the land, possibly, than the way it was described to me, or showed. Maybe I was on it and maybe I wasn't. It was my first trip in that country that I ever made.

Q. Now, did I understand you to say that you deposited in the Lewiston National Bank about \$2,800.00, about January, nineteen hundred and—

A. Why, I think it was somewhere along there.

Q. Are you sure it was the Lewiston National Bank?

A. Why, I don't see how I could be mistaken in the bank I was doing business with.

Q. Well, couldn't you make a mistake and not have deposited \$2,800.00, or anything like that amount, in the Lewiston National Bank?

A. Why, let's see: I had that much in the Bank of Camas Prairie when I came here, and in making a deal for the cigar-store it might be possible that I gave a check on the Bank at Camas Prairie and transferred the rest of it. Now, it might be possible; but I had that much money in the Bank of



(Testimony of Van V. Robertson.)

Camas Prairie when I came to Lewiston the last of December, and I bought into the cigar-store that spring, early in the spring, I don't remember the time exactly, or early in the winter, I don't remember the date, but anyway I had this money, and if I didn't check it—make one check there before, why I transferred the entire amount; but it is possible that I made another check. The records would show. I have never given it a thought, particularly.

Q. Well, the reason I ask you is because my information is that you didn't have any account—that you never had any account in the [695—365] Lewiston National Bank when you made your original entry.

A. That I never had any account?

Q. No, sir. I say, that is my understanding, and I want to be sure.

A. Well, I am very sure I did, and I think the bank-books will show it. If they don't it is a very queer system. I think I have cancelled checks at home. Possibly in moving around I have destroyed them, but I usually keep those things quite a while. They are good receipts, and I done all my business—pretty near all my business—through that bank.

Q. How much money did you get from Robnett?

A. \$400.00.

Q. And did you give a mortgage the same day?

A. Yes, sir, I think so.

Q. To whom did you give the mortgage?—to Robnett?

(Testimony of Van V. Robertson.)

A. Well, I believe so. I am not really positive, but I believe it was to Robnett.

Q. Now, did you talk to anybody else in the bank about this money except Robnett? A. No.

Q. Now, how long after you made your proof at the Land Office did you sell this land?

A. I think that I moved to Grangeville in the spring of 1904; that is, the early summer, in June, some time the first to the 7th of June; and I think it was along in the early fall that I made the deed.

Q. Several months afterwards?

A. Yes; it was after I moved to Grangeville, the next season. It was over a year, because I know that I was pushed up on the notes—on the note, rather,—and had to make some kind of settlement.

Q. Now, with whom did you negotiate the sale?

A. George Kester.

Q. Will you state what the transaction was—how it came about? [696—366]

A. Well, he wrote to me and told me the mortgage was due and they wanted the money, and I wrote back to him that it was impossible to raise the money at the present time; that I would like to sell the land, and I understood they was buying land, and if they was mine was for sale; that I didn't have no money to pay out on the land, and I was tied up in business and was owing there. And he wrote back that they were land poor. I think the next letter I got was that he was land poor, and whether I made a proposition—I think he made me a proposition to take the land and cancel the note. Anyway, that is



(Testimony of Van V. Robertson.)

what I finally done—just cancelled the note.

Q. And do you know to whom you made the deed?

A. I don't know whether it was to the Lewiston National Bank or to George Kester.

Q. And you secured that note that you gave them by a mortgage on your timber claim, did you?

A. Yes, sir.

Q. And how long were you negotiating—what period did it cover—a week, or a month, or how long?

A. Oh, possibly two or three weeks—a couple of weeks, maybe. I am not positive about that.

Q. And you accepted his proposition and made the deed and the mortgage was cancelled; is that correct?

A. Yes, sir.

Q. Did you come down here from Grangeville to settle it up?

A. No, sir; he sent the deed up and I went and I and my wife signed it and had it acknowledged there and sent it back to him.

Q. And you didn't make anything out of the transaction?

A. Why, I lost my location fees, and the estimate on the timber, and expenses on the trip; that's how much I got out of it.

Q. I show you timber and stone lands sworn statement dated February 24th, 1903, signed by Van V. Robertson, and ask you whether you signed that statement? [697—367]

A. Do you want me to read that?

Q. No; I just want to know if you signed that and filed it in the land office the date it bears?



(Testimony of Van V. Robertson.)

A. Yes, sir.

Q. And you filed it in the land office? That is your sworn statement of the original filing papers?

A. Oh, I filed it.

Q. And there is a nonmineral affidavit, bearing the same date, and is that your signature to that?

A. Yes, sir.

Q. And you filed that at the same time, did you not? A. I think so.

Q. There is the testimony of Van V. Robertson, given May 20th, 1903. I will ask you if that is your signature to that paper? A. Yes, sir.

Q. I show you the cross-examination of Van V. Robertson, taken the same day, and I will ask you if that is your signature to that paper?

A. That is my signature.

Q. And that is to the paper that I have just referred to, is it?

A. Well, that is my signature that you have right in there. I know my own handwriting, but I haven't read the paper over; but that is my signature.

The SPECIAL EXAMINER.—Well, he presents that paper to you and asks you if that is your signature to that paper; and you answer it yes?

WITNESS.—Yes.

Mr. GORDON.—This account that you opened at the Lewiston National Bank was a checking account, was it,—an open account?

A. Yes, sir.

Mr. GORDON.—We offer in evidence timber and stone lands sworn statement of Van V. Robertson, the

(Testimony of Van V. Robertson.)

nonmineral affidavit of Van V. Robertson [698—368] both of said papers dated February 24th, 1903, the notice for publication, the testimony of Van V. Robertson given on final proof, and the cross-examination thereof, all of which papers were identified by the witness, the testimony of the witnesses on final proof, and the cross-examination of the witnesses on final proof, the Receiver's Receipt and the Register's Certificate, dated May 20th, 1903, a certified copy of the patent, dated the 3d of August, 1904, issued to Van V. Robertson, all relating to the entry of the southwest quarter of section 10, township 39 north, of range 3 east, Boise meridian. Also, a certified copy of a mortgage made by Van V. Robertson, and Nettie B., his wife, to Clarence W. Robnett, to the property hereinbefore described to secure a promissory note of Van V. Robertson for \$500.00, of even date, to the order of Clarence W. Robnett, payable in one year, executed by Van V. Robertson and wife before John E. Nickerson, a notary public, May 20th, 1903, and recorded at the request of C. W. Robnett February 15th, 1904.

Mr. TANNAHILL.—The defendants severally object to all of the documents offered, in so far as they relate to bills No. 388 and 407, upon the ground that they are irrelevant and immaterial, the entry not being involved in those proceedings. And the defendants further severally object to the introduction of all the final proof papers, and especially the testimony of the claimant, Van V. Robertson, and the cross-examination of the claimant, Van V. Rob-



(Testimony of Van V. Robertson.)

ertson, the testimony of the witness Edward L. Knight, and the cross-examination of the witness Edward L. Knight, the testimony of the witness William B. Benton, and the cross-examination of the witness William B. Benton; upon the ground that they relate to the final proof, and matters occurring long after the filing of the sworn statement, and they are irrelevant and immaterial.

Said documents were thereupon marked by the Reporter as Exhibits 18, 18A, 18B, 18C, 18D, 18E, 18F, 18G, 18H, 18I, 18J, 18K, 18L, 18M, 18N, and 18-O. [699—369]

Mr. GORDON.—Q. Mr. Robertson, what is your employment now? A. I am a farm laborer.

Q. A farm laborer? A. Yes, sir.

Q. When you entered this claim you were a married man, were you? A. Yes, sir.

Q. And of what did your family consist?

A. My wife and two daughters.

Cross-examination.

(By Mr. TANNAHILL.)

Q. Mr. Robertson, who made out your sworn statement, or first papers? A. I don't remember.

Q. Do you remember that John E. Nickerson made them out? A. Johnny Nickerson?

Q. John E. Nickerson?

A. No; I don't remember as to that.

Q. As I understand you, Mr. Robertson, you had no agreement with Mr. Robnett, or anyone else, to sell him the land? A. No, sir.

Q. Prior to filing your sworn statement?



(Testimony of Van V. Robertson.)

A. No, sir.

Q. And you had no such agreement at the time you made your final proof?

A. No—nor no time afterwards.

Q. Then, your affidavit that you made at the time you filed your sworn statement, that “I have made no other application under said acts; that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not, directly or indirectly, made any agreement or contract, or in any way or manner, with any person or persons whomsoever, [700—370] by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself,” that affidavit was true at the time you made it, was it?      A. Yes, sir.

Q. And it was true at the time you made your final proof?      A. Yes, sir.

Q. And it is still true?      A. Yes, sir.

Q. And did you have any talk with either Kester or Kettenbach or Dwyer regarding the sale of the land, before you filed your sworn statement?

A. I never did have a talk with Kettenbach, nor Dwyer. In fact, I never met Mr. Dwyer until to-day; I was introduced to him to-day at noon; that is the first time I ever met the gentleman, and I don't know that I was ever introduced to Mr. Kettenbach. I have done lots of business in the banking business with Mr. Kester, or Robnett, or some of them, but I don't think I ever met Mr. Kettenbach. I knew him

(Testimony of Van V. Robertson.)

by sight, but I don't remember of ever having any conversation with him at all.

Q. Then, your first negotiations regarding the sale of the land was the negotiations you made with Mr. Kester, something like a year after you made your final proof? A. Yes, sir—it was over a year.

Q. Over a year? A. Yes, sir.

Q. And you sold your land by reason of those negotiations?

A. Yes. We done all of our business by correspondence. I haven't seen the man for—well, not since I went to Grangeville, I don't think. I don't believe I have seen him in the last five or six years—five years, anyway. I haven't met him during that time.

Q. There wasn't anything wrong about your entry in any way that you know of? [701—371]

A. No, sir.

Q. Now, you say that in your conversation with Mr. Robnett he told you that he would endeavor to sell it for you on commission? A. Yes, sir.

Q. And he also told you that he had some other land that he was selling?

A. Yes, sir. I think he told me that him and his family and relatives had some 8 or 10 claims, and that the bank had a good many deeds, and he said that they would have opportunities to sell the land that I would never hear of, possibly, and he thought he could sell it for me.

Q. He never told you that he and Kester and Kettenbach were in any way interested together in land?

(Testimony of Van V. Robertson.)

A. Well, no, I don't think that he did. I have no recollection of him making any such a statement.

Redirect Examination.

(By Mr. GORDON.)

Q. Had you ever borrowed any money from either the Kettenbachs or Kester before? A. No, sir.

Q. Have you since?

A. I borrowed \$300.00 that same fall, and secured it with a \$300.00 note that I had.

Q. Who did you borrow that from?

A. George Kester, I believe.

Q. Have you ever done any work for any of them? Have you ever been employed by them?

A. No, sir.

Q. And you paid that note, did you?

A. Yes, sir.

Mr. GORDON.—That's all, Mr. Robertson.  
[702—372]

**[Testimony of Frank J. Bonney, for Complainant.]**

FRANK J. BONNEY, a witness called in behalf of the complainant, being first duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. GORDON.)

Q. You are Frank J. Bonney? A. Yes, sir.

Q. Where do you live, Mr. Bonney?

A. Orofino.

Q. How long have you lived at Orofino?

A. About two years, I believe.

Q. Three years?



(Testimony of Frank J. Bonney.)

A. About two years, I believe—about a year and a half or two years.

Q. Where did you live before that time?

A. Close to Weippe.

Q. How far is that from Pierce?

A. About eight miles.

Q. And did you live at Pierce in June, 1906?

A. Why, I don't remember the date, but I was in Pierce.

Q. Were you married at that time?      A. Yes, sir.

Q. And of what did your family consist?

A. My wife and three or four children.

Q. Well, how many—three or four?

A. In 1906?

Q. Yes—four years ago.

A. I guess I must have had about four then.

(Laughing.)

Q. How many have you now?

A. I have got six, I suppose. (Laughing.)

Q. Any dead?      A. No, sir.

Q. How old are you? [703—373]

A. About 35—36, I believe.

Q. What is your occupation at the present time?

A. I am a carpenter at present.

Q. And what was your occupation in June, 1906?

A. Why, I have done a little of everything. I am a machinist by trade.

Q. Were you working as a machinist then?

A. Is that the time I took up the timber claim?

Q. Yes.

(Testimony of Frank J. Bonney.)

A. I believe I was helping put the machinery on the dredge then. No—I believe I was carpentering for Mr. Gaffney at the time.

Q. And what wages did you make at that time?

A. \$3.00 or \$3.50—I don't remember.

Q. Did you work all the year, or just part of the year?

A. Oh, I don't know. I was working most of the time, I think.

Q. Did you own your home?      A. Yes, sir.

Q. And was it mortgaged?      A. No, sir.

Q. And what was the value of it?

A. About \$400.00, I guess.

Q. That wasn't a homestead, was it?

A. Yes, sir.

Q. And at that time had you proved up and obtained a patent?      A. No, sir, I don't believe I had.

Q. Now, you took up a claim under the timber and stone act, did you?      A. Yes, sir.

Q. And what induced you to take up a timber claim?

Mr. TANNAHILL.—The defendants object to any evidence relative to the taking up of a timber claim, in so far as it relates to bills 388 and 406, on the ground that it is irrelevant and immaterial, the [704—374] entry not being involved in those two actions.

The Reporter thereupon repeated the last question.

WITNESS.—Well, I thought that I could make a little money out of it—a profit.

(Testimony of Frank J. Bonney.)

Q. Did you have a bank account at that time?

A. No, sir.

Q. Did you have the money with which to pay for a timber claim?      A. I had part of it.

Q. When you first spoke to anyone about taking one up?      A. Yes, sir, I think so.

Q. How much did you have?

A. I don't know. When I first talked about it I didn't have quite enough; in fact, I had—oh, a couple or three hundred dollars, I guess; I don't remember how much money I had; I know I had a little.

Q. Well, who located you on a timber claim?

A. Mr. Steffey.

Q. Mr. Harvey J. Steffey?

A. I guess that was the name—Harvey, anyway.

Q. Now, did you talk with him about taking up a timber claim before you went to view the land?

A. I believe I did.

Q. Well, don't you know?

A. I spoke to Mr. Steffey. I talked to him, and asked him if he knew of any good claims, and I spoke to him a time or two.

Q. And what did he say?

A. I believe the first time I spoke to him he didn't know of any, and later he did and showed them to me.

Q. Now, did he have an arrangement with you about paying a location fee?

A. No, sir, I don't believe he did.

Q. Did he charge you a location fee?

A. Well, I don't believe he did. I don't remember.



(Testimony of Frank J. Bonney.)

Q. You didn't agree to pay him one, anyhow, did you?

A. No, sir, I don't believe I did; I don't remember.

Q. Now, what was your arrangement with Steffey? What arrangement did you have with Steffey?

A. Well, I believe none, any more than that he told me that his claim wasn't much good, that they was nearly all gone, but if I took it up that he would sell it for—so that I could make a couple of hundred dollars, anyhow, maybe better.

Q. What was that?

A. I think so that I could make a couple of hundred dollars, or maybe better.

Q. You were not employed at that time, were you?

A. Yes, sir, I think I was; I believe I was building a house for Mr. Gaffney.

Q. Do you remember when you were up before the Grand Jury at Moscow last winter, and I asked you that question, and whether or not you told me that you were not employed at that time?

A. I don't remember, but I think I told you I was employed.

Q. Do you remember this question being asked you: "What was your business at that time?" "Answer. I was carpentering." "Question. Were you at work at that time?" "Answer. No, sir, not just at that time." Do you remember those questions and answers being asked and given?

A. I don't remember, but I believe I was at work at that time. That is a good while ago—

(Testimony of Frank J. Bonney.)

Q. Now, what was it that Steffey said to you?

A. Well, he told me that his claim wasn't very good, but he believed if I wanted to take it he could sell it for me for a couple of hundred dollars, so that I could make that much profit on it.

Q. Did he tell you that he would guarantee you that you would make that much?

A. Well, sir, I couldn't say—I don't know as he did—I believe [706—376] he did. I believe he told me that he was sure that he could get that much, and maybe more.

Q. Were you to advance any of the money at all to take up that claim?

A. No, sir; there wasn't nothing said about that, but I supposed that I was to put up the money.

Q. And he took you over the land, did he?

A. Yes, sir.

Q. And then you came down to Lewiston to file on the land, did you?      A. Yes, sir.

Q. And who paid the expenses of your coming from your home down to Lewiston to file?

A. Well, I believe I did. I wouldn't say for sure whether I borrowed money—I got money of Steffey a time or two, and whether Steffey gave me money at that time or not I couldn't say.

















